Dec 19 1862

Mr. Justice Clifford

SUPREME COURT OF THE UNITED STATES:

No. ~~22~~. 144. 65.

JOSIAH A. NOONAN, APP'T,

vs.

JOHN B. LEE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

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Gideon, print.

DISTRICT COURT OF THE UNITED STATES OF AMERICA.
For the District of Wisconsin.

UNITED STATES OF AMERICA, } *ss.*
District of Wisconsin. }

At a stated term of the District Court of the United States of America, for the District of Wisconsin, begun and held, according to law, at the City of Milwaukie, in said District of Wisconsin, on the first Monday (being the second day) of January, A. D., 1860. Present, the Honorable Andrew G. Miller, Judge of said Court, presiding, John H. Lewis, Marshal, John M. Miller, Clerk. Among other the following proceedings were had, to wit:

JOHN B. LEE,
vs.
JOSIAH A. NOONAN,
LINDSAY WARD,
JASON DOWNER,
LEVI HUBBELL and
WILLIAM H. MASON.

Be it remembered, that heretofore, to wit: on the fourth day of March, A. D., 1859, came John B. Lee, by his solicitors, Messrs. Ogden, Brown and Ogden, and filed his bill against Josiah A. Noonan, Lindsay Ward, Jason Downer, Levi Hubbell and William H. Mason, as follows:

In Chancery.

To the Judge of the District Court of the United States for the District of Wisconsin.

John B. Lee, of Albion, Orleans County, in the State of New York, and a citizen of the State of New York, brings his bill against Josiah A. Noonan, Lindsey Ward, Jason Downer, Levi Hubbell and William H. Mason, all of the City of Milwaukie, State of Wisconsin, and citizens of the State of Wisconsin.

And thereupon, your orator complains and says that on or about the first day of October, one thousand eight hundred and fifty-five, the said Josiah A. Noonan executed under his hand and seal, and delivered to your orator a bond bearing date on that day in the penal sum of eight thousand dollars with a condition there-

under written, in substance, that if the obligor in the said bond, his heirs, executors, or administrators, should pay or cause to be paid, to your orator the obligee in the said bond named, or to his certain attorney, executors, administrators or assigns, the sum of four thousand dollars ($4,000) in four equal annual installments, payable respectively at the expiration of one, two, three and four years from the date of the said bond, and should pay interest annually on all sums remaining unpaid, at the rate of seven per centum per annum, then the said bond to be void, otherwise to be and remain in full force, as by the said bond, ready to be produced by your orator as this Court shall direct, will more fully appear. And the said Josiah A. Noonan to secure the payment of the principal and interest mentioned in the said bond, did at the same time execute under his hand and seal, and delivered to you a mortgage bearing the same date with the said bond, and conditioned for the payment of the said sum of four thousand dollars at the time and in the manner herein before mentioned, according to the condition of the said bond, by which said mortgage the said Josiah A. Noonan mortgaged unto your orator in fee, certain lands and real estates, situate in the County of Milwaukie, which mortgaged premises were described in the said mortgage, as follows, to wit: An equal undivided half part or share of that certain tract of land bounded and described as follows, viz: Beginning in the centre of the Milwaukie River, at the centre of the road represented on the recorded plat of the village of Mechanicsville, as running east and west between blocks five (5) and six (6) in said village of Mechanicsville, running thence easterly in the centre of the said street to the centre of a street running north and south between blocks three (3) and five (5) in Mechanicsville aforesaid, thence southerly in the centre of said last mentioned street to the centre of a street running east and west between blocks three (3) and four (4) in the said village of Mechanicsville, thence easterly in the centre of the said last mentioned street to a point that would be intersected by a north and south line through the middle of block three (3) in Mechanicsville aforesaid, thence southerly on the line bounding the west end of lots one (1,) two (2,) three (3) and four (4) in block four (4) in Mechanicsville aforesaid, to the south line of lot four (4) in block four (4) aforesaid, thence easterly in the south line of said lot four (4) in block four (4,) to the west line of a lot of land containing about one-half an acre, represented on said plat of Mechanicsville as being nearly in square form in the south-east corner of the town plat of Mechanicsville aforesaid, thence southerly on the west line of said last described tract of land to the south line of the town plat of Mechanicsville, thence easterly on the said last mentioned line to the east line of fractional lot two (2) in

section number four (4) in township seven (7) north of range twenty-two (22) east, thence south to the south line of said fractional lot number two (2,) thence westerly on the south line of said fractional lot number two (2) to the centre of the Milwaukie River, thence northerly in the centre of the said Milwaukie River as it winds and turns, to the place of beginning; and that said mortgage was given to secure the payment of the purchase money for the land described in the said mortgage, being the said sum of four thousand dollars mentioned in said bond, which mortgage was duly witnessed and acknowledged so as to entitle it to be recorded, and the same was afterwards duly recorded as a mortgage in the office of the Register of Deeds of Milwaukie County, in volume 32 of mortgages, on pages 13 and 14, on the fifth day of October, one thousand eight hundred and fifty-five, at eight o'clock in the forenoon, as by the said mortgage and the certificates of acknowledgment, and of the recording aforesaid indorsed thereon, and now ready to be produced as this Court shall direct, will more fully appear.

And your orator further states that in and by said mortgage, the said Josiah A. Noonan covenanted and agreed to and with your orator, that in case of the non-payment either of principal, interest or taxes, at the time when the same should become due and payable, according to the said mortgage or the condition of the said bond, then in such case the whole amount of said principal sum should, at the option of your orator, be deemed to have became due, and the same with the interest thereon, as specified in the said bond and mortgage, should thereupon be collectable in a suit at law, or by foreclosure of the said mortgage in the same manner as if the whole of the principal sum had been made payable at the time when any such failure in payment should occur as aforesaid. And your orator states and charges that the said Noonan has neglected and refused to pay either principal or interest on the said bond and mortgage, and has been notified by your orator, that under said covenant your orator claimed that the whole principal and interest was due and payable. And your orator believes, and therefore further states, that the sum of four thousand dollars, the amount secured by said bond and mortgage, together with the interest on that sum, from the first day of October, one thousand eight hundred and fifty-five, still remains due and unpaid to your orator, and that no proceedings at law have been had to recover the debt secured by the said bond and mortgage, or any part thereof.

And your orator believes, and therefore further states, that Lindsey Ward, Jason Downer, Levi Hubbell, and William H. Mason, have or claim some interest in the mortgaged premises, as subsequent purchasers, or incumbrancers or otherwise.

Your orator therefore prays that the usual decree may be made for the sale of the said mortgaged premises aforesaid, and for the payment of the amount due your orator for principal and interest upon the said mortgage, together with his costs in this suit; and that the said defendants, and all persons claiming under them subsequent to the commencement of this suit, or who have any liens by judgment or decree or otherwise, upon the mortgaged premises subsequent to the said mortgage of your orator, or any liens or claims thereon, by or under any such subsequent judgment or decree, either as purchasers, incumbrancers or otherwise, may be barred and foreclosed of all equity of redemption in the said premises; and that your orator may have such further or such other relief as the nature of the case may require, and as to this Court may seem proper and agreeable to equity. May it please this Court to grant to your orator a writ of subpœna, commanding the said Josiah A. Noonan, Lindsey Ward, Jason Downer, Levi Hubbell, and William H. Mason, by a certain day, and under a certain penalty, to be and appear before this honorable Court, and then and there to answer the premises, and further to stand to and abide such order and decree therein as shall be agreeable to equity and good consciences, and your orator shall ever pray, &c.

JOHN B. LEE,
By THOMAS L. OGDEN.

OGDEN, BROWN & OGDEN,
Solicitors and of Counsel for Complainant.

Whereupon a subpœna issued as follows:

UNITED STATES OF AMERICA,
District of Wisconsin. } *ss.*

The President of the United States of America, to Josiah A. Noonan, Lindsay Ward, Jason Downer, Levi Hubbell, [SEAL.] and William H. Mason, greeting:

You are hereby commanded, that you personally appear before the Judge of the District Court of the United States of America, for the District of Wisconsin, in our Court of Chancery, in and for the District aforesaid, on the first Monday of April next ensuing, at Milwaukie, to answer to a Bill of complaint, exhibited against you in our said Court, by John B. Lee.

And to do further, and receive what our said Court shall have considered in that behalf: and this you are not to omit under the penalty which may ensue.

This process of subpœna is directed to the Marshal of the District, who is hereby commanded to serve the same upon the said Josiah A. Noonan, Lindsey Ward, Jason Downer, Levi Hubbell, and William H. Mason, if to be found in the District, and due return thereof make.

Witness the Honorable ANDREW G. MILLER, Judge of the District Court of the United States for the District of Wisconsin, at the city of Milwaukie, in the said District, this fourth day of March, in the year of our Lord one thousand eight hundred and fifty-nine, and of our Independence the eighty-third.

J. M. MILLER,
Clerk.

OGDEN, BROWN & OGDEN,
Solicitors.

It is ordered by our said Court, that the said Josiah A. Noonan, Lindsey Ward, Jason Downer, Levi Hubbell, and William H. Mason, the defendants aforesaid, do enter their appearance in this suit, in the Clerk's Office, on or before the day and time at which this Subpœna is returnable, as aforesaid; otherwise the bill filed may be taken as confessed.

And on or before the return day of said writ, came the said Marshal and returned said writ with his *return indorsed thereon*, as follows:

Return to Subpœna.

Served on the within named Josiah A. Noonan and Levi Hubbell, this 4th day of March, 1859, and served on the within named Jason Downer, this 11th day of March, 1859, by delivering to each of them personally a copy of this subpœna. Served on the within named Lindsey Ward, by leaving a copy of this subpœna at his usual place of abode, with a free white person, a member of the family. This 15th day of March, 1859; the within named William H. Mason not found.

M. J. THOMAS,
Marshal.

And afterwards, on the fourth day of April, A. D., 1859, (being a rule day of said Court,) came the said complainant by his solicitor, and entered a rule on the defendants to plead as follows:

Rule to Plead.

JOHN B. LEE,
vs.
JOSIAH A. NOONAN, LINDSEY WARD, JASON DOWNER, LEVI HUBBELL, AND WILLIAM H. MASON.

On motion of Ogden, Brown & Ogden, solicitors for the complainants, it is hereby ordered, that defendants plead, answer or demur to the complainants bill, on or before the first Monday of May next.

OGDEN, BROWN & OGDEN,
Complts. Solrs.

And afterwards, to wit: on the ninth day of May, A. D., 1859, came the defendant, Josiah A. Noonan, by his solicitors, Messrs. Downer & LaDue, and filed his answer, as follows:

Answer of Noonan.

The separate answer of Josiah A. Noonan to the bill of complaint exhibited against him and others in the United States District Court, in and for the District of Wisconsin, in equity, by John B. Lee.

This defendant saving and reserving, &c., for answer to said bill, or to so much thereof as he is advised is material for him to answer unto, answers and says: That he admits that he made the bond and mortgage in said bill of complaint mentioned, and says that the same were given for, and to secure the purchase money of the premises in said bill mentioned.

That said complainant and his wife, simultaneously with the execution and delivery of said bond and mortgage, by this defendant to said complainant, executed in due form of law under their hands and seals, and delivered to this defendant a warrantee deed of said premises, wherein and whereby they did, in consideration of four thousand dollars, as in said deed expressed, grant, bargain, release, alien, convey and confirm said premises unto said Noonan, his heirs and assigns, forever, together with the privilege of damming and flowing the Milwaukie river, on said fractional lot, to (in said deed and bill mentioned,) as high as said river might or would be raised by maintaining a dam at least nine feet high where a certain dam was located across said river, near the south line of fractional lot two, in the year 1857, as described in a deed from David Bigelow and Amasa Bigelow, to Harman L. Prentice, and also all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining to have or to hold the same to said Noonan, his heirs and assigns, forever.

And the said John B. Lee did, in and by said deed, for himself and his heirs, the said premises, in the quiet and peaceable possession of the said Noonan, his heirs and assigns, against the said John B. Lee and his wife, their heirs, and against all and every person lawfully claiming or to claim the same, covenant and agree to warrant and forever defend.

And further answering, the defendant says: That the whole of the agreement or agreements between said complainant and said Noonan, respecting said lands, is not correctly set forth in said bill of complaint, but there is, on the back of said bond, a contract in writing, made before the delivery of said bond by said Noonan to said complainant, and which, in fact, forms part

and parcel of said bond, and of the agreements pertaining to the purchase of said lands in the words and figures following, to wit:

"I agree, if my title fails to the property, for the consideration of which this bond is given, except as against the United States, for the portion of the river beyond the meandered line, that I will not enforce this bond; and if any incumbrances shall be found, that the amount of the same shall be deducted from the moneys to fall due on this bond.

JOHN B. LEE."

Dated October 1st, 1855.

That this defendant, further answering on information and belief, alleges that one Daniel Bigelow pretended to lay out or caused to be laid out into lots, and platted upon the South-East part of the South-East quarter of section No. four in township No. seven North of range No. twenty East, being now in the county of Milwaukie, State of Wisconsin, a town or village plat which he called and named "Mechanicsville," and which is the same town or plat referred to and mentioned in said deed and mortgage, and at the time of making and delivering said deed and mortgage, this defendant, on information and belief, alleges that there was no legal and valid plat of "Mechanicsville" aforesaid; that said pretended plat was not surveyed, laid out, platted, acknowledged and recorded so as to make the same valid according to any law in force, either at the time it was pretended to plat the same and record the said plat, which was in the year 1836, or at any subsequent time; that said pretented plat or map was not certified by the surveyor who laid off and surveyed the same, as the defendant alleges, on information and belief, and is and was entirely void.

That this defendant, on information and belief, alleges that said complainant and all persons were by law, in force in the State of Wisconsin the first day of October, 1855, prohibited from selling, leasing, conveying and disposing of any lots in any town or city, or any part thereof, until the plat of such town or city should be recorded in the proper office, with the certificate of the surveyor thereto attached, and the acknowledgment before some officer authorized by law to take acknowledgment of deeds of the proprietors thereof, which acknowledgment was to be duly certified by the acknowledging officer and recorded with said plat. And this defendant pleads in bar of this suit, and relies upon the fact that at the time of making and delivering of said deed and mortgage, to wit: first day of October, 1855, there had never been a valid plat of said town of "Mechanicsville" made and recorded, and that said deed and mortgage were made in viola-

tion of the laws of the land, and are void, and ought not to be enforced by this Court.

And, further answering, this defendant says, that said pretended plat of said "Mechanicsville" is the only plat of said Mechanicsville ever made before the first day of October, 1855, as he, on information and belief, alleges, and such pretended plat as appears by the original thereof, as he is informed, and on information and belief alleges, located said Mechanicsville upon the South-East trail of the South-East quarter of section four aforesaid, and that neither said complainant nor his said wife, at the time of said conveyance by them to this defendant, or at any other time, ever had any right, title or interest in and to said South-East quarter of said section four, as this defendant, on information and belief, alleges; and this defendant never obtained possession thereof under said deed, but it was owned and occupied at the time of making said deed and ever since, by persons claiming adversely to said complainant and this defendant, and is still so owned and occupied. That this defendant is informed and believes, and, on information and belief, alleges that there was a mistake in locating said pretended plat, and that it was intended to locate the same on the South-East quarter of the *South-West* quarter of said section four, instead of on the South-East quarter of said section four, and that said pretended plat is and was utterly void and of no effect, and, on information and belief, alleges that no title passed to this defendant by the execution and delivery of said deed, executed by said Lee and wife to this defendant.

That one John J. Orton was, at the time said deed and mortgage were executed, in possession of the whole or nearly all the land embraced in said deed, and claimed title thereto, and, on information and belief, this defendant alleges that said Orton had title to said lands at the date of said deed, to wit: the first day of October, 1855, and was seized in fee simple thereof, and is still so seized; and that said complainant had not any title thereto, and did not convey to this defendant any right to build, erect or maintain said dam, and that said complainant's title to said lands and water power has failed, and said bond and mortgage ought not to be enforced against this defendant.

And this defendant claims that said deed, bond and mortgage, and all agreements connected with said lands between complainant and this defendant, ought to be rescinded and annulled, and he hereby offers to re-deed and re-convey to said complainant said premises, and avers that before the commencement of this suit, he so offered, on his surrendering said bond and mortgage, or on such terms as may be, under all the circumstances, equitable.

And this defendant, further answering, says that he denies that said complainant ever notified him that under the covenant in said mortgage, he, said complainant, claimed that the whole principal and interest mentioned in said bond and mortgage was due and payable, and he admits that he has not paid anything on said bond and mortgage, and, on information and belief, alleges that he ought not to pay said money specified in said bond and mortgage, and, on information and belief, denies that there is due from this defendant to said complainant on said bond and mortgage, the sum of $4,000 and interest, as mentioned in said bill, or any sum whatever.

And having been fully answered, this defendant prays to be hence dismissed with costs.

J. A. NOONAN.

DOWNER & LA DUE,
Solicitors for Defendant, Noonan.

UNITED STATES OF AMERICA,
District of Wisconsin:

On this ninth day of May, A. D., 1859, personally appeared before me, the above-named Josiah A. Noonan, and made oath that he has read the foregoing answer by him subscribed, and knows the contents thereof, and that the same is true of his own knowledge, except that portion which is stated on his information and belief, and as to that he believes it true.

J. M. MILLER,
Clerk.

And afterwards, on the twenty-third day of June, A. D., 1859, came the said complainant, by his said solicitors, and filed his replication as follows:

Replication.

DISTRICT COURT OF THE UNITED STATES,
For the District of Wisconsin. } In Chancery.

The replication of John B. Lee, complainant, to the separate answer of Josiah A. Noonan, one of the defendants of the bill of complaint of above complainant.

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiency of the said answer for replication, thereunto saith: That he will aver and prove his said bill to be true, certain and sufficient in the law, to be answered unto; and that the said answer of the said

defendant is uncertain, untrue and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever, in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things, this repliant is, and will be ready to aver and prove, as this honorable Court shall direct; and humbly prays, as in and by his said bill he has already prayed.

OGDEN, BROWN & OGDEN,
Solicitors for Complainant.

And now, at this same term, to wit: January Term, A. D., 1860, and on the sixteenth day thereof, to wit: on the eighth day of February, 1860, the following proceedings were had, to wit:

Bill taken as confessed, and reference to master, &c.

JOHN B. LEE,
vs.
JOSIAH A. NOONAN,
LINDSEY WARD,
JASON DOWNER,
LEVI HUBBELL and
WILLIAM H. MASON.
} In Equity.

This day came the complainant, by his counsel, and on his motion it is ordered by the Court, that this bill be and is hereby taken, as confessed, against the defendants, Lindsey Ward, Jason Downer, and Levi Hubbell, for their not filing their plea, answer or demurrer to the bill on file. And this cause having been argued upon, the bill and the answer of Josiah A. Noonan, replication, proofs and exhibits, on consideration whereof, it is ordered by the Court, that reference be and hereby is made to a master to report the amount due to the complainant.

And afterwards, to wit: on the eighteenth day of said term, to wit: on the thirteenth day of February, A. D., 1860, the following proceedings were had, to wit:

Report of Master, &c.

This day came John M. Miller, Esq., the master to whom reference was made, to report the amount due the complainant, and made report that the sum of five thousand, two hundred and twenty-two dollars and sixty-seven cents, is found due the complainant, as follows:

DISTRICT COURT OF THE UNITED STATES OF AMERICA,
For the District of Wisconsin.

JOHN B. LEE,
vs.
JOSIAH A. NOONAN,
LINDSEY WARD,
JASON DOWNER,
LEVI HUBBELL and
WILLIAM H. MASON.

In Equity.

Chancery J. Page 220.

To the Judge of the District Court of the United States of America, For the District of Wisconsin:

In pursuance and by virtue of an order of this Court, made in the above cause, and bearing date the eighth day of February, in the year of our Lord one thousand eight hundred and sixty, by which it was referred to me, being one of the Masters of the Court, to compute, ascertain and report the amount due to the complainant, for principal and interest on the bond and mortgage, mentioned and set forth in the bill of complaint filed in this cause. I do respectfully certify and report, that I have been accompanied by the counsel for the complainant, and have computed and ascertained the sum of five thousand, two hundred and twenty-two dollars and sixty-seven cents, (5,222.67,) to be the amount due the complainant in the cause, on the said bond and mortgage for the principal and interest up to and including the date of this my report.

And I do further certify and report, that the schedule hereunto annexed, marked "A," and making a part of this my report, contains a statement and account of the principal and interest moneys due to the complainant as aforesaid, the period of the computation of the interest and its rate; and to which, for greater certainty, I refer. All which is respectfully submitted.

February 13th, 1860.

J. M. MILLER,
Master in Chancery.

Schedule "A," referred to in the preceding Report.

Bond and mortgage, executed by J. A. Noonan to John B. Lee, dated October 1st, 1855, conditioned for the payment in four equal annual installments, with interest at 7 per cent. per annum of $4,000 00

Interest from October 1, 1855, to date—4 years, 4 months, 12 days, at 7 per cent, ... 1,222 67

Amount due this date, ... $5,222 67

Milwaukie, February 13th, 1860.

J. M. MILLER,
Master in Chancery.

The bond and mortgage referred to in the report of the said Master, are as follows:

Bond.

Know all men by these presents, that I, Josiah A. Noonan, of the city of Milwaukie, State of Wisconsin, am held and firmly bound unto John B. Lee, in the sum of eight thousand dollars lawful money of the United States of America, to be paid to the said John B. Lee, or to his certain attorney, heirs, executors, administrators or assigns, to which payment well and truly to be made I bind myself, my heirs, executors and administrators, and each and every of them firmly by these presents.

Sealed with my seal, and dated the first day of October, in the year of our Lord one thousand eight hundred and fifty-five.

The condition of this obligation is such, that if the above bounden Josiah A. Noonan, his heirs, executors, administrators, or any of them, shall well and truly pay, or cause to be paid unto the above mentioned John B. Lee, or to his certain attorney, executors, administrators or assigns, the just and full sum of four thousand dollars, ($4,000) in four equal annual installments, payable respectively at the expiration of one, two, three and four years from this date, and shall pay interest annually, on all sums remaining unpaid at the rate of seven per centum, without any fraud or other delay, then this obligation to be void and of none effect, otherwise to remain in full force and virtue.

Sealed and delivered in the presence of

J. A. NOONAN. [SEAL.]

DAVID B. OGDEN.

I agree, if my title fails to the property, for the consideration of which this bond is given, except as against the United States, for the portion of the river beyond the meandered line, that I will not enforce this bond; and, if any incumbrances shall be found, that the amount of the same shall be deducted from the monies to fall due on this bond.

JOHN B. LEE.

Dated, October 1st, 1855.

Mortgage.

Know all men, that Josiah A. Noonan, of the city of Milwaukie, and State of Wisconsin, party of the first part, in consideration of a conveyance of the premises hereinafter described, and of one dollar in hand, paid by John B. Lee, of Albion, Orleans county, in the State of New York, party of the second part, the receipt whereof is hereby acknowledged, doth hereby grant, bargain, sell, and convey to the said party of the second

part, his heirs and assigns forever, the following Real Estate, being and lying in the county of Milwaukie, and State of Wisconsin, and known and described as follows, to wit: an equal undivided half part or share of that certain tract of land bounded and described, as follows, viz: Beginning in the centre of the Milwaukie river at the centre of the road represented on the recorded plat of the village of Mechanicsville, as running east and west between Blocks five (5) and six (6) in said village of Mechanicsville, running thence easterly in the centre of the said street to the centre of a street running north and south between Blocks three (3) and five (5) in Mechanicsville, aforesaid, thence southerly in the centre of said last mentioned street to the centre of a street running east and west between Blocks three (3) and four (4) in said village of Mechanicsville, thence easterly in the centre of said last mentioned street to a point that would be intersected by a north and south line through the middle of Block three (3) in Mechanicsville, aforesaid, thence southerly on the line bounding the west end of lots, one, (1) two, (2) three (3) and four, (4) in Block four (4) in Mechanicsville aforesaid, to the south line of lot four (4) in Block four (4) aforesaid, thence easterly on the south line of said lot four (4) in Block four (4) to the west line of a lot of land containing about one-half ($\frac{1}{2}$) of an acre represented on said plat of Mechanicsville, as being nearly in a square form in the south-east corner of the town plat of Mechanicsville, aforesaid, thence southerly on the west line of said last described tract of land to the south line of the town plat of Mechanicsville, thence easterly on said last mentioned line to the east line of fractional lot two (2) in section number four (4) in township number seven, (7) north of range number twenty-two (22) east, thence south to the south line of said fractional lot number two, (2) thence easterly on the south line of said fractional lot number two (2) to the centre of the Milwaukie river, thence northerly in the centre of the Milwaukie river as it winds and turns to the place of beginning; also the privilege of damming and flowing the Milwaukie river on said fractional lot number two, (2) as high as the said river would be raised by maintaining a dam at least nine (9) feet high where a certain dam was located across said river near the south line of fractional lot two (2) in the year 1837.

Together with the privileges and appurtenances to the same belonging. To have and to hold the same to the said party of the second part, his heirs and assigns forever, hereby covenanting that the said party of the first part, will forever warrant and defend the same to the party of the second part, his heirs and assigns, against all claims whatsoever, provided always, and these presents are upon this express condition, that if the

said party of the first part, his heirs, executors, or administrators shall pay, or cause to be paid to the said party of the second part, his heirs, executors, administrators, or assigns, the just and full sum of four thousand dollars ($4,000) in four equal annual installments, payable respectively at the expiration of one, two, three and four years from this date, and shall pay interest annually on all sums remaining unpaid at the rate of seven per centum per annum, according to the condition of a certain bond bearing even date herewith executed by the said party of the first part, to the said party of the second part, and shall, moreover, pay annually to the proper officers, all taxes which shall be assessed on said real estate, then these presents shall be null and void. But in case of the non-payment of any sum of money (either of principal, interest or taxes) at the time or times when the same shall become due, agreeably to the condition of these presents, or of the aforesaid bond or any part thereof, then in such case, the whole amount of said principal sum shall, at the option of the said party of the second part, his representatives or assigns, be deemed to have become due, and the same, with interest thereon at the rate aforesaid, shall thereupon be collectable in a suit at law, or by foreclosure of this mortgage, in the same manner as if the whole of said principal sum had been made payable at the time when any such failure in the payment shall occur as aforesaid; and it shall be lawful in such case for the said party of the second part, his heirs, executors, administrators or assigns, to grant, sell and convey the said real estate with the appurtenances thereunto belonging, at public auction or vendue; and on such sale to make and execute to the purchaser or purchasers, his, her or their assigns forever, good and sufficient deeds of conveyance in the law, pursuant to the statute in such case made and provided; and in case of the foreclosure of this mortgage, the said party of the first part for himself and his representatives covenants and agrees that he will pay to the said party of the second part, his representatives or assigns, in addition to the taxable costs in the foreclosure suit, reasonable and customary solicitor's fees.

In witness whereof, the said party of the first party hath hereunto set his hand and seal this first day of October, in the year eighteen hundred and fifty-five.

Signed, sealed and delivered in presence of

DAVID B. OGDEN,
THOMAS L. OGDEN.

JOSIAH A. NOONAN. [seal.]

STATE OF WISCONSIN, }
Milwaukie County. } *ss.*

On this first day of October, A. D., 1855, personally came before me, Josiah A. Noonan, the grantor in the above conveyance, to me known, and acknowledged that he executed the same freely and voluntarily.

DANIEL B. OGDEN,
Notary Public, residing in Milwaukie City.

Received for record October 5th, 1855, at 8 o'clock, A. M., and recorded in Vol. 32 of mortgages, on pages 13 and 14.

CHARLES J. KERU,
Register, Milwaukie Co., Wis.

The following testimony was read on the part of the complainant.

Deposition of Levi Blossom.

U. S. DISTRICT COURT, }
District of Wisconsin. }

JOHN B. LEE, }
vs. }
JOSIAH A. NOONAN, ET. AL. }

Deposition of Levi Blossom, a witness produced and sworn on the part of the complainant in the above-entitled cause, taken before Jno. A. Savage, Jr., a master of the said Court, on the 12th day of November, 1859, by consent of parties, the complainant being present at such examination by T. L. Ogden, Esq., his attorney, and the defendant, Noonan, by Jason Downer, Esq., and the said deponent, Levi Blossom, being first duly sworn, was examined on the verbal interrogatories of the respective attorneys, and his answers reduced to writing by said Master, and read over to and subscribed by said deponent.

JNO. A. SAVAGE, JR.,
Master in Chancery.

Levi Blossom, being duly sworn, on oath deposed and said, I once acted as agent for Herman V. Prentice in regard to an individual interest in lands on the Milwaukie river, with mills about three or four miles north of Milwaukie. I don't recognize the particular description of the land mentioned in the mortgage and bill of complaint, but the land to which I allude was sit-

uated on the Milwaukie river, some three or four miles north of this city. It embraced lands in some parts of section four, in a place then known as Mechanicsville, and embraced a saw-mill, which was at that time the only saw-mill within four miles of Milwaukie, on the river, and was called Bigelow's mills. I had charge of the land as early as 1841 or 1842, and up to 1848. Mr. Prentice was in possession as the landlord, and I leased the land to a man named George Golding, and also to a man named Pennington. I received rents from them for Mr. Prentice. I received rent on the land up to 1845, 1846, or 1847. I don't remember who was in possession after that time.

Cross-examined.

Mr. James H. Rogers claimed an interest in the same property I think. He claimed an interest in the water-power and mills. I can't say whether or not Mr. Rogers claimed exclusive possession during the time I was acting for Prentice. I remember we had some law-suits about the property. I recovered possession and got the rents. The rents amounted to some several hundred dollars. I can't recollect how late I collected rents. I collected the rents as long as the property rented; I can't tell whether it was after 1843 or not. It is my impression that some portion of the rents were paid to Rogers. Mr. Rogers conceded that Prentice had an interest in the property and did not object to his receiving rent after the suits about the property. The tenants I have named, I think, lived on the land. There were some enclosure on the place, but whether it covered the whole property or not I can't say. The tenants cultivated some portion of the land I think.

L. BLOSSOM.

U. S. DISTRICT COURT.

JOHN B. LEE,
vs.
JOSIAH A. NOONAN, ET AL.

Take notice that the testimony of Herman V. Prentice will be taken, on the part of the complainant, before John A. Savage, Jr., Court Commissioner, on Tuesday, the twenty-seventh instant, at 2½ o'clock in the afternoon of that day.

OGDEN, BROWN & OGDEN,
Complainant's Solicitors.

To Messrs. DOWNER & LADUE,
Solicitors for defendant, J. A. Noonan.

Deposition of H. V. Prentice.

U. S. DISTRICT COURT, *Wisconsin.*

JOHN B. LEE,
vs.
JOSIAH A. NOONAN, ET AL. } In Equity.

The following deposition of Herman V. Prentice was taken before the undersigned U. S. Commissioner, at his office in the city of Milwaukie, on the 29th day of September, 1859, at 3 o'clock P. M.; on the 28th of September, the day appointed in the annexed notice, the complainant's solicitor, Thomas H. Ogden, with the deponent, appeared for the purpose of the taking of such deposition, but in the absence of the defendant's solicitor, Mr. Downer, the same was adjourned until the 29th, on which day appeared the complainant, by his solicitor, and the deponent, Herman V. Prentice, being first duly sworn, was examined on the verbal interrogatories of the complainant's solicitor, and reduced to writing by the undersigned U. S. Commissioner, and at the conclusion were read over to the said deponent, and subscribed by him.

JOHN A. SAVAGE, JR.,
U. S. Commissioner.

Dated October 3d, 1859.

Herman V. Prentice, being first duly sworn, deposed and said:

I know the parties to this suit; I know of a mortgage given to the complainant by the defendant, Noonan. It is on property formerly known as Mechanicsville, in Milwaukie county. I was present when the complainant demanded of Noonan payment of the mortgage, and said that in default of the payment, settlement or compromise, he would commence proceedings for the foreclosure of the mortgage. He said he should foreclose for the whole debt unless he paid. There were several interviews at which I was present, when the complainant made such a demand; the last one took place on January 18, 1859, at J. A. Noonan's office in Milwaukie. I once owned the land embraced in the mortgage referred to. I owned it first between the years 1836 and 1838. I sold it to Thomas H. Rogers. I got title to it afterwards by legal proceedings against James H. Rogers in a foreclosure of a mortgage. I received a deed; I don't know where it is; I think it is at home. I conveyed the land to assignees, and they sold it to the complainant. I have seen that land within the last three years; at the time I last saw it, I don't recollect whether the land was fenced in and occupied or not.

H. V. PRENTICE.

Pleas before the Honorable Andrew G. Miller, Judge of the Third Judicial Circuit, Territory of Wisconsin, and presiding Judge of the Circuit Court of the County of Milwaukie in said Territory, at a term of said Court begun and holden at the Court House in the City of Milwaukie, on the first Monday of November, A. D., 1839.

OWEN ALDRICH, ESQ., Sheriff.

CYRUS HAWLEY, Register.

HERMAN V. PRENTICE,
vs.
JAMES H. ROGERS, SOLOMON JUNEAU, and the President and Directors and Company of the Bank of Wisconsin.

Be it remembered, that heretofore, to wit: on the 29th day of October, A. D., 1839, came the said plaintiff by Thomas Wright, Esq., Solicitor, and filed in the office of the Register of said Court, his certain "bill" in the words and figures following, to wit:

To the Honorable Andrew G. Miller, Judge of the District Court of the Third Judicial District of Wisconsin Territory.

Humbly complaining sheweth unto your Honor your orator, Herman V. Prentice, of the State of New York, that on or about the twenty-seventh day of July, in the year of our Lord one thousand eight hundred and thirty-seven, James H. Rogers, of the County of Milwaukie and Territory aforesaid, was seized or pretended to be seized in fee of the premises hereinafter mentioned.

And your orator further sheweth unto your Honor, that on the said twenty-seventh day of July, one thousand eight hundred and thirty-seven, the said James H. Rogers, by his certain bond or obligation in writing, under his hand and seal duly made and executed, became justly indebted to your orator in the penal sum of seven thousand four hundred dollars, lawful money of the United States of America, with a condition thereunder written to pay to your orator, or to his certain attorney, executors, administrators or assigns, the just and full sum of three thousand seven hundred dollars in four equal annual payments, with an nual interest on the twenty-seventh day of July of each year, as follows, viz: Nine hundred and twenty-five dollars of principal, and two hundred and fifty-nine dollars for interest, on the twenty-seventh day of July, eighteen hundred and thirty-eight; nine hundred and twenty-five dollars of principal, and one hundred ninety-four 25-100 dollars for interest, on the twenty-seventh day of July, eighteen hundred and thirty-nine; nine hundred

and twenty-five dollars of principal, and one hundred twenty-nine 50-100 dollars for interest on the twenty-seventh day of July, eighteen hundred and forty; nine hundred twenty-five dollars principal, and sixty-four 75-100 dollars for interest on the twenty-seventh day of July, eighteen hundred and forty-one, as in and by said bond or obligation now in the custody of your orator, and ready to be produced as the Honorable Court shall direct, and which, when produced, your orator, for greater certainty, prays leave to refer, may more fully and at large appear.

And your orator further shows unto your Honor, that the said James H. Rogers, in order to secure the payment of the said principal sum of money with the interest thereon in manner aforesaid, in and by a certain indenture of mortgage bearing date the said twenty-seventh day of July, in the year one thousand eight hundred and thirty-seven, and in consideration of the sum of three thousand, seven hundred dollars, current money of the United States, to him in hand paid, the receipt whereof was in and by said indenture acknowledged, did grant, bargain, sell, release, enfeoff and confirm unto your orator, his heirs and assigns forever, all the land, tenements and hereditaments hereinafter described, to wit: one equal and undivided half part or share of that certain tract of land bounded and described as follows, to wit: beginning in the centre of Milwaukie river, at the centre of the street represented on the recorded plat of the village of "Mechanicsville" as running East and West between blocks (5) and six (6) in said village of "Mechanicsville," running thence easterly in the centre of said street to the centre of a street running North and South between blocks three (3) and five (5) in Mechanicsville aforesaid; thence Southerly in the centre of said last-mentioned street to the centre of a street running East and West between blocks three (3) and four (4) in said village of Mechanicsville; thence Easterly in the centre of said last-mentioned street to a point that would be intersected by a North and South line through the middle of block three (3) in Mechanicsville aforesaid; thence Southerly on the line bounding the West ends of lots one, two, three and four in block four in Mechanicsville aforesaid to the South line of lot four in block four aforesaid; thence Easterly on the South line of said lot four in block four, to the West line of a tract of land containing about one-half of an acre represented on said plat of Mechanicsville, as being nearly in a square form, in the South-East corner of the town plat of Mechanicsville aforesaid; thence Southerly on the West line of said last described tract of land to the South line of the town plat of Mechanicsville; thence Easterly on the said last mentioned line to the East line of fractional lot two in section No. four in township seven, North of range twenty-two,

thence South to the South line of said fractional lot No. two; thence Westerly on the South line of said fractional lot No. two to the centre of Milwaukie river; thence Northerly in the centre of said Milwaukie river, as it winds and turns to the place of beginning, be the same more or less; also an equal undivided one-third part of the saw-mill situated upon said premises, with the privileges, implements and appurtenances thereunto attached and belonging, together with the privilege of damming and flowing the Milwaukie river at any point on said fractional lot No. two, as high as said river would be raised by maintaining a dam at least nine feet high, where the saw-mill is now (was then) located across said river, near the South line of said fractional lot No. two; also all the rents and profits due and to accrue on a certain lease executed by Daniel Bigelow and James H. Rogers and Samuel Hinman, bearing date the thirtieth day of September, one thousand eight hundred and thirty-five, (1835,) being the same premises deeded by your orator to the said James H. Rogers on the day of the date of said mortgage, and to secure the purchase money therefor, said mortgage was given, to have and to hold the said above described premises unto your orator, his heirs and assigns, to the sole and only proper use, benefit and behoof of your orator, his heirs and assigns forever; provided, always, and the said indenture of mortgage was upon the express condition that if the said James H. Rogers, his heirs, executors, administrators or assigns, should well and truly pay, or cause to be paid, to your orator, his heirs, executors or administrators, the sum of three thousand, seven hundred dollars in four equal annual payments, with annual interest, on the twenty-seventh day of July of each year, according to the condition of the aforesaid bond or obligation executed by the said James H. Rogers to your orator as collateral security, that then the said indenture of mortgage and the said bond or writing obligatory should cease, and be null and void, and the said James H. Rogers, in and by said indenture of mortgage, did, for himself, his heirs, executors and administrators, covenant, promise, grant and agree to, and with your orator, his heirs, executors, administrators and assigns that he, the said James H. Rogers, would well and truly pay or cause to be paid unto your orator, his heirs, executors, administrators or assigns, the said sum of three thousand, seven hundred dollars, at the time and in the manner in said indenture of mortgage mentioned, and it was, by the said indenture of mortgage, covenanted and agreed by and between the said James H. Rogers and your orator, that in case of non-payment of the said sum of three thousand, seven hundred dollars and annual interest, or any part thereof, at the time or times limited for the payment thereof, in the condition of the bond aforesaid, then, and in such

case, it should and might be lawful for your orator, his heirs, executors, administrators or assigns, and the said James H. Rogers did, in and by said indenture, covenant and agree, and in and by said indenture, empower and authorize your orator, his heirs, executors, administrators or assigns, to grant, bargain, sell, release and convey the above described premises, with the appurtenances thereunto belonging, at public auction or vendue, and, on such sale, to make and execute to the purchaser or purchasers, his, her or their heirs and assigns forever, good, ample and sufficient deeds of conveyance in the law, pursuant to the statute in that case made and provided; rendering the surplus monies, if any there should be, to the said James H. Rogers, his heirs, executors, administrators or assigns, after deducting the costs and charges of such vendue and sale, as before mentioned, as in and by the said indenture of mortgage duly executed by the said James H. Rogers under his hand and seal, and now in the possession of your orator, ready to be produced and proven as this honorable Court shall direct, reference being thereunto had, will more fully and at large appear.

And your orator further shows unto your Honor, that, on the said twenty-seventh day of July, in the year eighteen hundred and thirty-seven, the execution of the said indenture of mortgage was duly acknowledged in due form of law before John P. Hilton, then Supreme Court Commissioner in and for the county of Milwaukie aforesaid, as in and by a certificate of the acknowledgment thereof endorsed on the said indenture of mortgage, and signed by the said John P. Hilton aforesaid, and to which your orator for greater certainty prays leave to refer, may more fully and at large appear.

And your orator further sheweth unto your Honor, that, on the said twenty-seventh day of July, eighteen hundred and thirty-seven, at six o'clock in the afternoon of that day, the said indenture of mortgage was duly received for record, and was in due form of law registered in the office of Register in and for the county of Milwaukie aforesaid, in volume H of mortgages, pages 299, 300 and 301, by Cyrus Hawley, Register of said county, as by the registry of said indenture of mortgage, now remaining in the office of the said Register, endorsed on the said indenture of mortgage, and signed by the Cyrus Hawley, Register as aforesaid, sufficiently appears, and to which said register and minute thereof, so as aforesaid endorsed on the said indenture of mortgage, your orator for greater certainty prays leave to refer himself, if it be necessary to do so.

And your orator further sheweth unto your Honor, that no proceedings have been had at law for the recovery of the debt or any part thereof, secured by said bond or obligation, and by said indenture of mortgage.

And your orator further sheweth unto your Honor, that the principal sum of nine hundred and twenty-five dollars, together with two hundred and fifty-nine dollars interest, being the first installment of said bond or obligation, due on the 27th day of July, eighteen hundred and thirty-eight: and the principal sum of nine hundred twenty-five dollars, and one hundred and ninety-four 25-100 dollars interest, being the second installment of said bond or obligation due on the twenty-seventh day of July, in the year eighteen hundred and thirty-nine, mentioned in said bond or obligation, and secured thereby and by said indenture of mortgage, still remain due and owing, no part of said bond or obligation having been paid or satisfied to your orator, so that your orator is greatly delayed and disappointed in the receipt of said monies; by reason of which said several premises, the said indenture of mortgage, and the estate thereby mortgaged to your orator, because absolute in your orator, his executors and administrators.

And your orator further sheweth unto your Honor, that the said James H. Rogers, has at all times possessed and enjoyed, and that he does still possess and enjoy the said mortgaged premises with the appurtenances, and that he has always received, and still does receive the rents, issues, and profits thereof.

And your orator further shews unto your Honor, and expressly charges, that the said mortgaged premises are a slender and scantily security for the payment of the principal and interest money so due to your orator as aforesaid, and that your orator, or some other person for him, hath frequently and in a friendly manner applied to the said James H. Rogers, and requested him to pay and discharge the said principal and interest monies so due to your orator on the said bond or obligation and indenture of mortgage in manner aforesaid, and your orator well hoped that the said James H. Rogers would have complied with such reasonable request of your orator, and would have paid to your orator such principal and interest moneys, so as aforesaid due to your orator on said bond or obligation and indenture of mortgage in manner aforesaid, as in equity and good conscience he ought to have done.

But now so it is, may it please your Honor, that the said James H. Rogers, Solomon Juneau, and the President, Directors and Company of the Bank of Wisconsin, combining and confederating to and with divers other persons at present unknown to your orator, but whose names, when discovered, your orator prays may be inserted herein, and that they may be made parties hereto, with fit and apt words to charge them, how to injure and aggravate your orator in the premises, and to defraud him of the said interest and principal monies so as aforesaid due to your

orator on the said bond or obligation and indenture of mortgage herein before mentioned, sometimes give out and pretend: that, although your orator's estate in the premises may have become absolute at law, yet, that your orator cannot dispose of said premises to any purchaser in any manner, and that the same will be subject to an equity of redemption: and at other times, the said James H. Rogers gives out and pretends that the said principal sums of money so due to your orator as aforesaid, and all the interest thereon, have been paid off and discharged, and thereby that the said bond or obligation and the said indenture of mortgage have become void, and that your orator's estate, title and interest in the premises, have become totally extinguished; all which actings and doings of the said James H. Rogers, Solomon Juneau, and the President, Directors, and Company of the Bank of Wisconsin, and their confederates, are contrary to equity and good conscience; and tend to the manifest wrong, injury and oppression of your orator.

In tender consideration whereof, and for as much as your orator has not a complete and safe remedy in the premises, at and by the strict rules of the common law, nor can foreclose the equity of redemption of the said mortgaged premises, or safely sell the same for the payment and satisfaction of the said principal and interest monies so as aforesaid due to your orator on the said bond or obligation and indenture of mortgage in manner aforesaid, to the end therefor, that the said James H. Rogers and Solomon Juneau, and the President, Directors, and Directors and Company of the Bank of Wisconsin may, upon their several and respective corporal oaths, true, full and perfect answers, make to all and singular, the said premises as fully and particularly, as if the same were here repeated, and they thereunto particularly interrogated according to the best of their respective knowledge, information, remembrance or belief, and that the said James H. Rogers may be decreed to pay to your orator the said principal sum of nine hundred and twenty-five dollars, and two hundred fifty-nine dollars interest, hereinbefore mentioned and expressed, and so due on said bond or obligation as the first installment thereof, and also the said principal sum of nine hundred twenty-five dollars, and one hundred ninety-four dollars and twenty-five cents interest hereinbefore mentioned and expressed, and so due on said bond or obligation and indenture of mortgage as the second installment thereof, hereinbefore mentioned and set forth as aforesaid.

And all the interest money now and to grow due thereon, together with all your orator's costs and charges in this behalf, sustained by a short day to be appointed by this Honorable Court, and in default thereof, that the said James H. Rogers, Solomon

Juneau, and the President, Directors, and Company of the Bank of Wisconsin, and all persons claiming, or to claim under ——, may be foreclosed of and from all equity of redemption and claim of, in and to said mortgaged premises, and every part and parcel thereof with the appurtenances, and may deliver over unto your orator all deeds, demises and writings whatever, relating to or concerning the same, and that all and singular, the said mortgaged premises, with the appurtenances, or such part thereof as shall be sufficient to satisfy said first and second installments with the interest money now due and owing to your orator as aforesaid on said bond or obligation, and indenture of mortgage may be sold by the order and decree of this Honorable Court, and out of the moneys arising from the sale thereof, your orator may be paid the full amount of the principal sum of nine hundred twenty-five dollars, and two hundred and fifty-nine dollars interest of the first installment, and the said principal sum of nine hundred and twenty-five dollars, and one hundred and ninety-four 25-100 dollars interest of the second installment hereinbefore mentioned and expressed, and so due to your orator as aforesaid, on the said bond or obligation, and indenture of mortgage in manner aforesaid, and all the interest moneys due and to grow due thereon, together with all your orator's costs and charges in this behalf sustained; and that your orator may have such other and further relief in the premises as to your Honor may seem proper, and shall be agreeable to equity and good conscience.

May it please your honor, the premises considered, to grant unto your orator the most gracious writ of subpœna of the United States of America, issuing out of and under the seal of this honorable Court, to be directed to the said James H. Rogers, Solomon Juneau, and the President, Directors & Company of the Bank of Wisconsin, therein and thereby commanding, on a certain day, and under a certain penalty therein to be inserted, personally to be and appear before your honor, in this honorable Court, then and there to answer all and singular, the said premises, and to stand to and abide by such order and decree, as to your honor shall seem meet, and shall be agreeable to equity and good conscience, and your orator will ever pray, &c.

THOMAS WRIGHT,
Solicitor for Complainant.

Afterwards, to wit: on the same day, to wit: October 29, A. D., 1839, subpœna issued, returnable on the first Monday of next term.

Afterwards, to wit: October 30, A. D., 1839, subpœna issued to Sheriff of Brown county, returnable first Monday of November next.

Afterwards, to wit: on the 4th day of November, A. D., 1839, came the Sheriff of Milwaukie county, and returned to the Office of the Register of said Court, subpœna, with endorsement thereon, in the words and figures following, to wit:

Territory of Wisconsin, Milwaukie County, to wit:

UNITED STATES OF AMERICA,
To the Sheriff of the County of Milwaukie, *greeting:*

[SEAL.] You are directed to subpœna James H. Rogers, Solomon Juneau, and the President and Directors & Company, of the Bank of Wisconsin, if they may be found in your county, and due return make of this writ on the first Monday of November next.

To James H. Rogers, Solomon Juneau, and the President, Directors & Company, of the Bank of Wisconsin:

We command you, personally, to appear before the Judge of the Third Judicial District Court in and for the county of Milwaukie, in the territory aforesaid, in our court of Chancery, on the first Monday of November next ensuing, wheresoever the said Court shall then be, to answer to a bill of complaint exhibited against you, in our said Court, by Herman V. Prentice, and to do further and receive what our said Court shall have considered in that behalf, and this you are not to omit under the penalty of two hundred and fifty dollars.

Witness, the Hon. Andrew G. Miller, Judge of the Third Judicial District Court, in and for the county of Milwaukie, in the Territory of Wisconsin, in chancery sitting at Milwaukie, the second Monday of June, A. D., 1839.

CYRUS HAWLEY.
Register.

THOMAS WRIGHT,
Solicitors for Complainant.

Personally served on S. Juneau, by reading, and copy given October 30, 1839; also served on James H. Rogers, October 31, 1839, by giving a copy of the within writ. Fees $2.38.

O. ALDRICH,
Sheriff.

October 31st, 1839.

Afterwards, to wit: on the 14th day of November, A. D., 1839, came the Sheriff of Brown county and returned into the Office of Register of said Court the subpœna heretofore issued to Sheriff of Brown county, with endorsements thereon, in the words and figures following, to wit:

Territory of Wisconsin, Milwaukie county, to wit:

THE UNITED STATES OF AMERICA, }
To the Sheriff of Brown County, *greeting:* }

You are hereby directed to subpœna James H. Rogers, Solomon Juneau and the President, Directors and Company of the Bank of Wisconsin, if they may be found in your county, and due return make of this writ on the second Monday of November next.

[SEAL.]

To James H. Rogers, Solomon Juneau, and the President, Directors and Company of the Bank of Wisconsin, *greeting:*

We command you personally to appear before the Hon. Andrew G. Miller, Judge of the Third Judicial District Court in and for the County of Milwaukie, in the Territory aforesaid, in our Court of Chancery, on the first Monday of November next, wheresoever the said Court shall then be held, to answer to a bill of complaint exhibited against you in our said Court by Herman V. Prentice, and to do further, and receive what our said Court shall have considered in that behalf, and this you are not to omit under the penalty of two hundred and fifty dollars.

Witness the Hon. Andrew G. Miller, Judge of the Third Judicial District Court, in and for the County of Milwaukie, in the Territory of Wisconsin, in Chancery, sitting at Milwaukie the second Monday of June, in the year of our Lord one thousand eight hundred and thirty-nine.

THOMAS WRIGHT,
Solicitor for complainant.

CYRUS HAWLEY,
Register.

Nov. 7, 1839, served upon the President, Directors & Co., of the Bank of Wisconsin, by leaving a copy at the banking house with the person in charge of the same. Solomon Juneau and James H. Rogers not found in the county. Fees $9.93.

CHARLES TULLAR,
Sheriff of Brown Co.

November 16, 1839.

It appearing to the Court that process of subpœna to appear and answer in the above cause, hath been duly issued, and that the same has been returned served. It is, thereupon, on motion of Thomas Wright, Esq., Solicitor for complainant, ordered that the said defendants, James H. Rogers and Solomon Juneau, and they are hereby required to plead, answer or demur to the said complainant's bill of complaint within sixty days from the date hereof, or that in default thereof,

the said complainant's bill of complaint be taken as confessed against them, the said defendants, and this cause is continued until the next term.

May 14, 1840. Order filed as follows:

HERMAN V. PRENTICE, *vs.* JAMES H. ROGERS and others.	Milwaukie County, District Court in Chancery sitting, May, 1840.

It appearing to the Judge of this Honorable Court in Chambers, that a subpœna to answer in the above entitled cause, was duly served by the Sheriff of Brown County upon the President, Directors and Company of the Bank of Wisconsin, on the 16th day of November, A. D., 1839, one of the defendants in the above entitled cause. Therefore, it is ordered on motion of H. Crocker, Solicitor for complainant, that the said President, Directors and Company of the Bank of Wisconsin, defendant as aforesaid, plead, answer, or demur to the complainant's bill of complaint on file, on or before the sixteenth day of June next, or that in default thereof, the said bill as against the said defendant be taken pro confesso, and the matters and things therein decreed accordingly.

A. G. MILLER,
Judge.

May 13th, 1840.

June 22, 1840. Order filed as follows:

In Chancery.

HERMAN V. PRENTICE, *vs.* JAMES H. ROGERS, et. al.	T. Wright, Solicitor, June 22, 1840.

It appearing to the satisfaction of the Court that a subpœna to appear and answer, has been duly served on all the defendants, and that they have not caused their appearance to be entered as is required by the rules and practice of this Court, and it further appearing that the said defendants have not answered, demurred or pleaded to the said complainant's bill of complaint within the time limited by the orders of the Court herein made.

It is thereupon, on motion of Mr. T. Wright, solicitor for complainant, ordered, adjudged, and decreed, that the said complainant's bill, be taken as confessed against all the defendants, and that it be referred to the master of this Court to ascertain and report the amount due on the bond and mortgage set forth in the said bill from the said James H. Rogers to the said complainant, and that he make report thereon, with all convenient speed, and

it is further ordered that the said master report as to the situation of the mortgaged premises referred to and set forth in said complainant's bill, and whether the same can be sold in parcels without prejudice to the interests of the parties

"By the Court"

afterwards, to wit: June 26, 1840, came Clinton Walworth, Esq., Master &c., and filed in the office of the Register of said Court, his report in the words and figures following, to wit:

In Chancery.

HERMAN V. PRENTICE, Complainant.
vs.
JAMES H. ROGERS, Defendant.

To the Honorable Andrew G. Miller, presiding Judge of the Third Judicial District of the Territory of Wisconsin.

In pursuance of an order, the District Court of the county of Milwaukie, sitting as a Court of Chancery in the above cause, made at the June term of the said Court for the year 1840, it was referred to a master to compute and ascertain the amount due to the above complainant for principal and interest on the bond and mortgage mentioned and set forth in the complainant's bill of complaint, and that he make report thereon with all convenient speed.

I, the subscriber, a master of this Honorable Court by virtue of and pursuant to the said order, do hereby report, that T. Wright, Esq., the solicitor for the complainant in the above cause, has appeared before me on the matters in reference in the said order mentioned; and I do further certify and report that I have computed and ascertained the amount due to the above complainant for principal and interest on the bond and mortgage mentioned and set forth in the said complainant's bill of complaint to be the sum of $2,533 2-100.

And I further certify and report that the further sum of $2,044 25-100 on future installments is yet to become due.

And I further certify and report that, in my opinion, the whole of the said premises in the mortgage mentioned should be sold on the amounts already and hereby reported to be due, and that it appears to me that such sale is necessary.

And I further certify and report that the schedule hereunto annexed, marked (A,) and making part of this my report, contains a statement and account of the principal and interest monies due and which are hereafter to grow due, to the above complain-

ant on the said bond and mortgage, and to which for greater certainty I refer.

All which is respectfully submitted.

C. WALWORTH,
Master, &c.

Dated Milwaukie, June 25, 1840.

Schedule annexed, marked (A,) referred to in the preceding report.

One bond dated July 27th, 1837, given by James H. Rogers to Herman V. Prentice, under seal in the penal sum of $7,400 conditioned for the payment of three thousand seven hundred dollars in four equal annual payments, with annual interest, on the 27th day of July each year, as follows, viz:

1st payment, July 27th, 1838—principal, ...	$925
interest, ...	$259
2d payment, July 27th, 1839—principal, ...	$925
interest, ...	$194 25/100

(The 1st and 2d payments due.)

3d payment, July 27th, 1840—principal, ...	$925
interest, ...	$129 50/100
4th payment, July 27th, 1841—principal, ...	$925
interest, ...	$ 64 75/100

(The 3d and 4th payment to become due.)

Which said bond is secured by a mortgage bearing even date with said bond.

1st payment, due July 27th, 1838, is	$925 00
Interest due thereon at same date, is	259 00
Which, added, makes	$1,184 00

due on said bond July 27th, 1838.

Interest due thereon from July 27th, 1838, to June 25th, 1840, being 1 year, 10 months and 29 days, is	$158 52
Which, added, makes	$1,341 52

due on the first installment, June 25th, 1840.

2d payment, due July 27th, 1839, is	$925 00
Interest due thereon at same date, is	$194 25
Which, added, makes	$1,119 25

Interest due thereon from July 27th, 1839, to June 25, 1840, being 10 months, 29 days, is } 71 50

Which, added, makes $1,190 50

due on the second installment, June 25th, 1840.

1st payment and interest, ... $1,342 52
2d " " 1,190 50

Added, makes $2,533 02

And making due in all on said bond the sum of $2,533.$\frac{02}{100}$, June 25th, 1840, for principal and interest to said complainant.

Yet to become due on said bond:

3d payment and interest, July 27th, 1840.

Principal, . . . $925 00
Interest, . . . 129 50

Added, makes $1,054 $\frac{50}{100}$

Due July 27th, 1840:

4th payment and interest, July 27th, 1841.

Principal, . . . $925 00
Interest, . . . 64 75

Which added, makes $989 $\frac{75}{100}$

due on said bond July 27th, 1841.

3d payment and interest, ... $1,054 50
4th " " 989 75

Added, makes $2,044 25

Leaving to become due on said bond, $2,044.$\frac{25}{100}$ on further installments.

Dated, Milwaukie, June 25th, 1840.

CLINTON WALWORTH,
Master in Chancery.

June 26, 1840.

It having been referred by order of this Court made on the 22d June, that it be referred to a Master of this Court to compute and ascertain the amount due on the bond and mortgage, and also the amount to become due thereon, and also to report as to the situation of the premises mentioned in said mortgage, and whether the same can be sold in parcels without prejudice to the parties. And the said Master, on the 25th day of June, having reported that there is now due on the said bond and mortgage the sum of $2,533.$\frac{3}{100}$, and that there will hereafter become due the

further sum of $2,044.$\frac{25}{100}$, and also having reported that said premises could not be sold in parcels, but that the same should be sold entire. Upon reading and filing said report, it is thereupon, on motion of Mr. Thomas Wright, solicitor for said complainant, ordered, adjudged and decreed, and the Judge of the said Court doth order, adjudge and decree, that the said report and the matters and things therein contained, do stand ratified and confirmed.

It is further ordered, adjudged and decreed, that all and singular, the several and respective premises mentioned and described in said mortgage, referred to and set forth in said complainant's bill of complaint, with the appurtenances, be sold at public auction to the highest bidder, by and under the direction of one of the Masters of this Court, or the Sheriff or Deputy Sheriff of Milwaukie county, by giving six weeks' previous notice of the time and place of said sale in some newspaper, published in Milwaukie county, which said mortgage premises are described as follows, to wit: One equal and undivided half-part or share of that certain tract of land bounded and described as follows, viz: Beginning in the centre of the Milwaukie river, at the centre of the street represented on the recorded plat of the village of "Mechanicsville" as running East and West between blocks five (5) and six (6) in said village of "Mechanicsville," running thence easterly in the centre of said street to the centre of a street running North and South between blocks three (3) and five (5) in Mechanicsville aforesaid; thence Southerly in the centre of said last-mentioned street to the centre of a street running East and West between blocks three (3) and four (4) in said village of Mechanicsville; thence Easterly in the centre of said last-mentioned street to a point that would be intersected by a North and South line through the middle of block three (3) in Mechanicsville aforesaid; thence Southerly on the line bounding the West end of lots one, two, three and four in block four in Mechanicsville aforesaid to the South line of lot four in block four aforesaid; thence Easterly on the South line of said lot four in block four, to the West line of a tract of land containing about one-half of an acre represented on said plat of Mechanicsville, as being nearly in a square form, in the South-East corner of the town plat of Mechanicsville aforesaid; thence Southerly on the West line of said last described tract of land to the South line of the town plat of Mechanicsville; thence Easterly on the said last mentioned line to the East line of fractional lot two in section No. four in township seven, North of range twenty-two, thence South to the South line of said fractional lot No. two; thence Westerly on the South line of said fractional lot No. two to the centre of Milwaukie river; thence Northerly in the centre

of said Milwaukie river, as it winds and turns to the place of beginning, be the same more or less; also an equal undivided one-third part of the saw-mill situated upon said premises, with the privileges, implements and appurtenances thereunto attached and belonging, together with the privilege of damming and flowing the Milwaukie river at any point on said fractional lot No. two, as high as the said river would be raised by maintaining a dam at least nine feet high, where the saw-mill dam is now located across said river, near the South line of said fractional lot No. two; also all the rents and profits due and to accrue on a certain lease executed by the said Daniel Bigelow and James H. Rogers and Samuel Hinman, bearing date the thirtieth day of September, one thousand eight hundred and thirty-five, (1835,) being the same deeded by the party of the second part to the said party of the first part this day, and to secure the purchase money therefor, this deed of mortgage is given.

That the said Master, Sheriff or Deputy, execute a deed of the same to the purchaser or purchasers thereof; that he deposit the moneys received at said sale, with the Clerk of the Court, and report his proceedings herein with all convenient speed.

It is further ordered, that out of the moneys received the said Clerk pay to the complainant the amount reported to be due him, with interest, costs and charges by him sustained, and that the remainder remain in Court to abide the further order thereof.

It is further ordered and decreed, that the said defendant and all others claiming under them, or either of them, be forever foreclosed of and from all equity of redemption of the foregoing premises; and that the said complainant be let into the possession thereof.

By the Court.

Afterwards, to wit: November 25th, 1840, came the Master of said Court and filed his report of sale in the Office of the Register of said Court in the words and figures following, to wit:

HERMAN V. PRENTICE,
vs.
JAMES H. ROGERS, ET. AL. } In Chancery.

To the Hon. A. G. Miller, Judge, &c.:

I, Clinton Walworth, Master in Chancery, in and for the county of Milwaukie, Wisconsin Territory, hereby report, that in pursuance of a decretal order of the District Court of Milwaukie county, sitting as a Court of Chancery in the above cause, made at the June term of said Court, to wit: on the 26th day of June,

1840, I did sell the mortgaged premises, in the said decree mentioned, a description whereof is hereinafter given, and the affidavit of publication annexed and made part of this report, at public auction at the Court House in the town of Milwaukie, in said county of Milwaukie, on Monday, October 5th, 1840, at 10 o'clock, A. M., having first given six weeks' previous notice of the time and place of such sale, with a brief description of the premises in the Milwaukie Advertiser, a weekly public newspaper, printed in said county; that at such sale the said premises were struck off to Herman V. Prentice, the complainant, for the sum of two thousand dollars, that being the highest sum bid for the same, and he being the highest and best bidder therefor, which said premises so sold as aforesaid, are described as follows, viz: the one equal undivided half-part or share of that certain tract of land, bounded and described as follows, viz: Beginning in the centre of the Milwaukie River, at the centre of the street represented on the recorded plat of the village of Mechanicsville, as running east and west between blocks five (5) and six (6) in said village of Mechanicsville, running thence easterly in the centre of the said street to the centre of a street running north and south between blocks three (3) and five (5) in Mechanicsville aforesaid, thence southerly in the centre of said last mentioned street to the centre of a street running east and west between blocks three (3) and four (4) in the said village of Mechanicsville, thence easterly in the centre of the said last mentioned street to a point that would be intersected by a north and south line through the middle of block three (3) in Mechanicsville aforesaid, thence southerly on the line bounding the west end of lots one (1,) two (2,) three (3) and four (4) in block four (4) in Mechanicsville aforesaid, to the south line of lot four (4) in block four (4) aforesaid, thence easterly on the south line of said lot four (4) in block four (4,) to the west line of a tract of land containing about one-half an acre, represented on said plat of Mechanicsville as being nearly in square a form in the south-east corner of the town plat of Mechanicsville aforesaid, thence southerly on the west line of said last described tract of land to the south line of the town plat of Mechanicsville, thence easterly on the said last mentioned line to the east line of fractional lot two (2) in section number four (4) in township seven (7) north of range twenty-two (22), thence south to the south line of said fractional lot number two (2,) thence westerly on the south line of said fractional lot number two (2) to the centre of the Milwaukie River, thence northerly in the centre of the said Milwaukie River as it winds and turns, to the place of beginning, be the same more or less.

Also an equal undivided one-third part of the saw-mill situated

upon said premises, with the privileges, implements and appurtenances thereto attached and belonging, together with the privilege of damming and flowing the Milwaukie river at any point on said fractional lot No. two, as high as the said river would be raised by maintaining a dam at least nine feet high, where the said mill-dam is now located across said river, near the south line of said fractional lot No. two.

Also, all the rents and profits due and to accrue on a certain lease executed by Daniel Bigelow and James H. Rogers and Samuel Hinman, bearing date the thirtieth day of September, one thousand eight hundred and thirty-five, (1835,) being the same (premises) deeded by the said party of the second part (to the mortgage herein) to the said party of the first part, this day, (the day of the date of said mortgage,) and to secure the purchase money thereof, the said deed of mortgage was given.

I further report that the said premises did not sell for the full amount by me reported to be due June 25th, 1840, and that it will leave the further sum of $654.\frac{66}{100}$, at that time reported due, unpaid, besides interest up to the day of sale and costs of suit.

I further report that I have applied the amount bid in part liquidation of the amount due, costs of suit to be deducted. And I further report that I have executed a good and sufficient deed for the said premises so sold as aforesaid to the above named Herman V. Prentice, the purchaser and complainant.

All which I respectfully submit to this Honorable Court.

Dated Milwaukie, October 5th, 1840.

CLINTON WALWORTH,
Master in Chancery.

Annexed to said report is an affidavit of Solomon C. Enos, publisher of the "Milwaukie Advertiser," of the publication of the notice of sale in said cause for six weeks, once in each week successively, previous to the fifth day of October, 1840, with a printed copy of said notice attached to said affidavit in the words and figures following, to wit: I, Solomon C. Enos, publisher of the Milwaukie Advertiser, being duly sworn, deposeth and saith that a notice of a sale in chancery by C. Walworth, Master, of which the annexed is a true copy, has been published in the Milwaukie Advertiser for six weeks, once in each week successively previous to the fifth day of October, 1840. S. C. ENOS.

TERRITORY OF WISCONSIN, County of Milwaukie. } *ss.*

On the 5th day of October, 1840, before me, came Solomon C. Enos, who, on oath, deposed that the above affidavit by him subscribed, is true.

A. FINCH, JR.,
Justice of the Peace.

In Chancery.

HERMAN V. PRENTICE, *vs.* JAMES H. ROGERS. } T. WRIGHT, Solicitor.

In pursuance of a decretal order of the District Court of the county of Milwaukie, sitting as a Court of Chancery, made in the above cause, will be sold at auction under the direction of the undersigned, or in my absence, of the Sheriff or Deputy Sheriff of said county, at the Court house, in the town of Milwaukie, at 10 o'clock, A. M., on Monday, the 5th day of October: the equal, undivided half-part or share of that certain tract of land, bounded and described, as follows, viz: Beginning in the centre of the Milwaukie river at the centre of the street, represented on the recorded plat of the village of "Mechanicsville," as running east and west between blocks five (5) and six (6) in said village of Mechanicsville, running thence easterly in the centre of said street to the centre of a street running north and south between blocks three (3) and five (5) in Mechanicsville aforesaid, thence southerly in the centre of said last mentioned street to the centre of a street running east and west between blocks three (3) and four (4) in said village of Mechanicsville, thence easterly in the centre of said last mentioned street to a point that would be intersected by a north and south line through the middle of block three in Mechanicsville aforesaid, thence southerly on the line bounding the west end of lots one, two, three and four, in block four in Mechanicsville aforesaid, to the south line of lot four in block four aforesaid, thence easterly on the south line of said lot four in block four, to the south line of a tract of land containing about one-half an acre represented on said plat of Mechanicsville, as being nearly in a square form, in the south-east corner of the town of Mechanicsville aforesaid, thence southerly on the west line of said last described tract of land to the south line of the town plat of Mechanicsville, thence easterly on said last mentioned line to the east line of fractional lot two, in section No. four, in township seven north of range twenty-two, thence south to the south line of said fractional lot No. two, thence westerly on the south line of said fractional lot No. two to the centre of the Milwaukie river, thence northerly in the centre of said Milwaukie river, as it winds and turns to the place of beginning, be the same more or less.

Also an equal, undivided, one-third part of the saw-mill situated upon said premises, with the privileges, implements, and appurtenances thereunto attached and belonging, together

with the privilege of damming and flowing the Milwaukie river at any point on said fractional lot No. two, as high as the said river would be raised by maintaining a dam at least nine feet high, where the said mill-dam is now located across said river, near the south line of said fractional lot two. Also all the rents and profits due, and to accrue on a certain lease executed by Daniel Bigelow, and James H. Rogers, and Samuel Hinman, bearing date the thirtieth day of September, one thousand eight hundred and thirty-five (1835) being the same (premises) deeded by the said party of the second part (to the mortgage herein) to the said party of the first part, this day, (the day of the date of said mortgage,) and to secure the purchase money thereof the said deed of mortgage was given.

CLINTON WALWORTH,
Master in Chancery.

Dated August 14, 1840.
26-10 f.

Nov. 25, 1840, Confirmed "By the Court."

I hereby enter up full satisfaction for the above balance reported due.
March 10, 1846.

HERMAN V. PRENTICE,
By L. BLOSSOM,
Special Atty.

STATE OF WISCONSIN,
Circuit Court, Milwaukie County. } *ss.*

I, Matthew Keenan, Clerk of said Court, do hereby certify that I have compared the foregoing with the record and proceedings in the above entitled cause; that it is a correct transcript therefrom, and the whole thereof, as the same remains on record in my office.

In testimony whereof, I have hereto set my hand and affixed the seal of said Court, this 15th day of November, A. D., 1859.
[SEAL.]

MATTHEW KEENAN,
Clerk.

STATE OF WISCONSIN,
County of Milwaukie. } *ss.*

I, Arthur McArthur, do hereby certify, that I am Judge of the Second Judicial Circuit of said State, and Presiding Judge of the Circuit Court, within and for the county of Milwaukie, that Matthew Keenan, whose name is subscribed to the certificate subjoined to the within record, is and was at the date of said certificate, Clerk of the Circuit Court of the county of Milwaukie, and State aforesaid, duly elected and qualified; that I am well acquainted with his hand-writing, and know the sig-

nature thereto to be genuine; and further, that said certificate is in due form of law, and that the seal thereto attached is the proper seal of said Court.

Deed.

Daniel Bigelow to Amasa Bigelow—Deed:

This indenture, made this thirty-first day of October, in the year of our lord one thousand eight hundred and thirty-six, between Daniel Bigelow, of the county of Milwaukie, Territory of Wisconsin, party of the first part, and Amasa Bigelow, of the same place, party of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of one hundred dollars lawful money, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, remised, released, aliened and confirmed, and by these presents doth grant, bargain, sell, remise, release, alien and confirm unto the said party of the second part, and to his heirs and assigns forever, all the one equal undivided eighth part of thirty-six acres of land situate, lying and being in the county of Milwaukie, and Territory of Wisconsin, and being in lot number two, in section number four of Township number seven, north in range number twenty-two east; said thirty-six acres comprises the whole of said lot number two, except block numbers two and three in the village of Mechanicsville, on the east side of the Milwaukie river, and also except one-half of an acre in the south-east corner of said lot, and also except three acres lying in the north-west corner of said lots, and also reserving all the right to all the water privileges adjoining said lot number two, and also one lot marked public, in block number one, and one lot marked public, in block number seven in the village of Mechanicsville, as designated on the recorded plat of said town lying on the east side of Milwaukie river. Together with all and singular, the hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim or demand whatsoever, if the said party of the first part, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances, to have and to hold the said premises as above described, with the appurtenances, unto the said party of the second part, and to his heirs and assigns, to his and their sole and only proper use, benefit and behoof forever, and the said party of the first part, for himself, his heirs, executors and administrators, doth covenant, grant, bargain and agree to and with the said party of the second part, and his heirs

and assigns, that at the time of the ensealing and delivery of these presents, he is well seized of the premises above conveyed, as of a good, sure, perfect, absolute and indefeasible state of inheritance in the law in fee simple, and hath good right, full power and lawful authority, to grant, bargain, sell and convey the same in manner and form as aforesaid, and that the same are free and clear of all incumbrances of what kind and nature soever, and that the above bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, he will forever warrant and defend.

In witness whereof, the said party of the first part hath hereunto set his hand and seal, the day and year first above written.

Sealed and delivered,

DANIEL BIGELOW. [SEAL.]

In presence of
P. BIRD,
F. W. HAWLEY.

WISCONSIN TERRITORY, }
Milwaukie County. } *ss.*

On this thirty-first day of October, one thousand eight hundred and thirty-six, before me came the within-named granter, Daniel Bigelow, to me known, and acknowledged that he executed the within deed, for the uses and purposes therein mentioned.

WM. N. GARDNER,
Notary Public.

Recorded 31st October, A. D., 1836, at 4 o'clock, P. M.

STATE OF WISCONSIN, }
Milwaukie county. }

Register's Office.

I hereby certify that the foregoing is a true and correct transcript from the records in my office, of the foregoing instrument recorded in volume "B" of deeds, on pages 354 and 355, and has been by me carefully compared with said records, and that it is the whole thereof.

In testimony whereof, I have hereunto set my hand this eighth day of December, A. D., 1859.

SAMUEL WAEGLE,
Register, Milwaukie county, Wisconsin.

By FRED. SCHLOEMILCH,
Deputy.

Deed.

Daniel Bigelow and Amasa Bigelow to Herman V. Prentice, warranty deed:

This indenture, made this twenty-ninth day of June, in the year of our Lord one thousand eight hundred and thirty-seven, between Daniel Bigelow and Amasa Bigelow, both of the town and county of Milwaukie, and the Territory of Wisconsin, parties of the first part, and Herman V. Prentice, of Madison county, in the State of New York, party of the second part, witnesseth that the said parties of the first part, for and in consideration of six thousand dollars, lawful money of the United States, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, remised, released, aliened and confirmed, and by these presents do grant, bargain, sell, remise, release, alien and confirm unto the said party of the second part, and to his heirs and assigns forever, all the lands and tenements and hereditaments hereinafter described, to wit: one equal and undivided half part or share of that certain tract of land bounded and described as follows, viz: Beginning in the centre of the Milwaukie river at the centre of the street represented on the recorded plat of the village of Mechanicsville, as running east and west between Blocks five (5) and six (6) in said village of Mechanicsville, running thence easterly in the centre of the said street to the centre of a street running north and south between Blocks three (3) and five (5) in Mechanicsville, aforesaid, thence southerly in the centre of said last mentioned street to the centre of a street running east and west between Blocks three (3) and four (4) in said village of Mechanicsville, thence easterly in the centre of said last mentioned street to a point that would be intersected by a north and south line through the middle of Block three (3) in Mechanicsville, aforesaid, thence southerly on the line bounding the west end of lots one, (1) two, (2) three (3) and four, (4) in Block four (4) in Mechanicsville aforesaid, to the south line of lot four (4) in Block four (4) aforesaid, thence easterly on the south line of said lot four (4) in Block four (4) to the west line of a tract of land containing about one-half (½) of an acre represented on said plat of Mechanicsville, as being nearly in a square form in the south-east corner of the town plat of Mechanicsville, aforesaid, thence southerly on the west line of said last described tract of land to the south line of the town plat of Mechanicsville, thence easterly on said last mentioned line to the east line of fractional lot two (2) in section number four (4) in township number seven, (7) north of range number twenty-two (22) east, thence south to the south line of said fractional lot number two, (2) thence westerly on the south line of

said fractional lot number two (2) to the centre of the Milwaukie river, thence northerly in the centre of the Milwaukie river as it winds and turns to the place of beginning, be the same more or less. Also, an equal undivided one-third part of the saw-mill situated upon said premises, with the privileges, implements and appurtenances thereunto attached and belonging, together with the privilege of damming and flowing the Milwaukie river at any point on said fractional lot No. two, as high as the said river would be raised by maintaining a dam at least nine feet high, where the saw-mill dam is now located across said river near the south line of said fractional lot No. two. Also, all the rents and profits due and to accrue on a certain lease executed by the said Daniel Bigelow and James H. Rogers and Samuel Hinman, bearing date the thirtieth day of September, one thousand eight hundred and thirty-five, (1835,) together with all and singular, the hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim or demand whatsoever of the said parties of the first part, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances, to have and to hold the said premises as above described, with the appurtenances, unto the said party of the second part, and to his heirs and assigns, to his and their sole and only proper use, benefit and behoof forever.

And the said parties of the first part, for themselves, their heirs, executors and administrators, do covenant, grant, bargain and agree to and with the said party of the second part, and his heirs and assigns, that at the time of the ensealing and delivery of these presents, they are well seized of the premises above conveyed, as of a good, sure, perfect, absolute and indefeasible estate of inheritance in the law in fee simple, and have good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form as aforesaid, and that the same are free and clear of all incumbrances of what kind and nature soever, and that the above bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person and persons lawfully claiming or to claim the whole or any part thereof, they will forever warrant and defend.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Sealed and delivered in presence of
WM. N. GARDNER,
WILLIAM CAMPBELL.

DANIEL BIGELOW, [SEAL.]
AMASA BIGELOW, [SEAL.]

Territory of Wisconsin, } ss. On this twenty-ninth
Milwaukie County. }

day of June, in the year one thousand eight hundred and thirty-seven, personally appeared before me Daniel Bigelow, and Amasa Bigelow, to me known as the grantors in the within deed, and severally acknowledged that they executed the same for the uses and purposes therein mentioned.

Recorded 30th June, A. D., 1837, at 8 o'clock, A. M. } WILLIAM N. GARDNER, Notary Public.

STATE OF WISCONSIN, } Register's Office.
Milwaukie County. }

I hereby certify that the foregoing is a true and correct transcript from the records in my office, of the foregoing instrument recorded in volume "C" of Deeds, on pages 329, 330 and 331, and has been by me carefully compared with said records, and that it is the whole thereof.

In testimony whereof, I have hereunto set my hand this eighth day of December, A. D., 1859.

SAMUEL WAEGLI,
Register Mil. Co., Wis.
By FRED. SCHLOEMILCH,
Deputy.

Deed.

Herman V. Prentice to James H. Rogers.—Warrantee Deed.

This indenture, made the twenty-seventh day of July, in the year of our Lord one thousand eight hundred and thirty-seven, between Herman V. Prentice, of the county of Madison in the State of New York, of the first part, and James H. Rogers, of the town and county of Milwaukie in the territory of Wisconsin, of the second part, Witnesseth, that the said party of the first part, for and in consideration of the sum of six thousand dollars to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, remised, released, aliened and confirmed, and by these presents doth grant, bargain, sell, remise, release, alien and confirm, unto the said party of the second part in his actual possession now being, and to his heirs and assigns forever, all the lands, tenements, and hereditaments hereinafter described, to wit: one equal and undivided half part or share of that certain tract of land bounded and described, as follows, viz: Beginning in the centre of the Milwaukie river at the centre of the street

represented on the recorded plat of the village of Mechanicsville, as running east and west between blocks five (5) and six (6) in said village of Mechanicsville, running thence easterly in the centre of said street to the centre of a street running north and south between blocks three (3) and five (5) in Mechanicsville aforesaid, thence southerly in the centre of said last mentioned street to the centre of a street running east and west between blocks three (3) and four (4) in said village of Mechanicsville, thence easterly in the centre of said last mentioned street to a point that would be intersected by a north and south line through the middle of block three (3) in Mechanicsville aforesaid, thence southerly on the line bounding the west end of lots one, two, three and four, in block four in Mechanicsville aforesaid, to the south line of lot four in block four aforesaid, thence easterly on the south line of said lot four in block four to the west line of a tract of land containing about one-half of an acre, represented on said plat of Mechanicsville, as being nearly in a square form in the south-east corner of the town plat of Mechanicsville. aforesaid, thence southerly on the west line of said last described tract of land to the south line of the town-plat of Mechanicsville, thence easterly on said last mentioned line to the east line of fractional lot two in section No. four in township seven, north of range twenty-two, thence south to the south line of said fractional lot No. two, thence westerly on the south line of said fractional lot No. two to the centre of the Milwaukie river, thence northerly in the centre of said Milwaukie river, as it winds and turns to the place of beginning, be the same more or less; also an equal, undivided, one-third part of the saw-mill situated upon said premises, with the privilege, implements and appurtenances thereunto attached and belonging, together with the privilege of damming and flowing the Milwaukie river at any point in said fractional lot No. 2, as high as the said river would be raised by maintaining a dam at least nine feet high where the saw-mill dam is now located across said river near the south line of said fractional lot No. 2; also all the rents and profits due, and to accrue on a certain lease executed by the said Daniel Bigelow, and James H. Rogers, and Samuel Hinman, bearing date the thirtieth day of September, one thousand eight hundred and thirty-five, (1835.) Together with all and singular, the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, and demand whatsoever of the said parties of the first part, either in law or equity, of in and to the above bargained premises, with the hereditaments and appurtenances—to have and to hold the said

premises as above described, with the appurtenances unto the said party of the second part, his heirs and assigns to the sole and only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever. And the said party of the first part for himself, his heirs, executors, and administrators, does covenant, grant, bargain, promise and agree to and with the said party of the second part, his heirs and assigns, the above bargained premises, and every part and parcel thereof in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part of the said premises will forever warrant and defend.

In witness whereof, the said party of the first part have hereunto set his hand and seal the day and year first above written.

HERMAN V. PRENTICE, [SEAL.]

Signed, sealed and delivered in presence of
H. S. HOSMER,
JOHN P. HILTON.

Territory of Wisconsin, } ss.
Milwaukie County. }

On this twenty-seventh day of July, A. D., 1837, personally came before me the within-named Herman V. Prentice, to me known, and acknowledged that he executed the within deed for the uses and purposes therein mentioned.

JNO. P. HILTON,
Sup. Court Comm'r.

Recorded 27th July, A. D., 1837, at 1½ past 5 o'clock, P. M.

STATE OF WISCONSIN, }
Milwaukie County. }

Register's Office.

I hereby certify that the foregoing is a true and correct transcript from the records in my office, of the foregoing instrument, recorded in volume "C" of deeds, on pages 396, 397 and 398, and has been by me carefully compared with said records, and that it is the whole thereof.

In testimony whereof, I have hereunto set my hand this eighth day of December, A. D., 1859.

SAMUEL WAEGLI,
Register, Wilwaukie County, Wisconsin.

By FRED. SCHLOEMILCH,
Deputy.

Mortgage.

James H. Rogers to Herman V. Prentice, mortgage.

This indenture, made the twenty-seventh day of July, in the year of our Lord one thousand eight hundred and thirty-seven, between James H. Rogers, of the town and county of Milwaukie, in the Territory of Wisconsin, of the first part, and Herman V. Prentice, of Madison county, in the State of New York, of the second part, Witnesseth, that the said party of the first part, for and in consideration of the sum of three thousand, seven hundred dollars, current money of the United States, to him in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released, enfeoffed and confirmed, and by these presents, doth grant, bargain, sell, release, enfeoff and confirm unto the said party of the second part, in his actual possession now being, and to his heirs and assigns forever, all the lands, tenements and hereditaments hereinafter described, to wit: one equal and undivided half part or share of that certain tract of land bounded and described as follows, viz: Beginning in the centre of the Milwaukie river at the centre of the street represented on the recorded plat of the village of Mechanicsville, as running east and west between Blocks five (5) and six (6) in said village of Mechanicsville, running thence easterly in the centre of said street to the centre of a street running north and south between Blocks three (3) and five (5) in Mechanicsville aforesaid, thence southerly in the centre of said last mentioned street to the centre of a street running east and west between Blocks three (3) and four (4) in said village of Mechanicsville, thence easterly in the centre of said last mentioned street to a point that would be intersected by a north and south line through the middle of Block three (3) in Mechanicsville, aforesaid, thence southerly on the line bounding the west ends of lots one, (1) two, (2) three (3) and four, (4) in Block four (4) in Mechanicsville aforesaid, to the south line of lot four (4) in Block four (4) aforesaid, thence easterly on the south line of said lot four (4) in Block four (4) to the west line of a tract of land containing about one-half ($\frac{1}{2}$) of an acre represented on said plat of Mechanicsville, as being nearly in a square form in the south-east corner of the town plat of Mechanicsville, aforesaid, thence southerly on the west line of said last described tract of land to the south line of the town plat of Mechanicsville, thence easterly on said last mentioned line to the east line of fractional lot two (2) in section number four (4) in township number seven, (7) north of range number twenty-two (22) east, thence south to the south line of said

fractional lot number two, (2) thence westerly on the south line of said fractional lot number two (2) to the centre of the Milwaukie river, thence northerly in the centre of the Milwaukie river as it winds and turns to the place of beginning, be the same more or less. Also, an equal undivided one-third part of the saw-mill situated upon said premises, with the privileges, implements and appurtenances thereunto attached and belonging, together with the privilege of damming and flowing the Milwaukie river at any point on said fractional lot No. two, as high as the said river would be raised by maintaining a dam at least nine feet high, where the saw-mill dam is now located across said river near the south line of said fractional lot No. two. Also, all the rents and profits due and to accrue on a certain lease executed by the said Daniel Bigelow and James H. Rogers and Samuel Hinman, bearing date the thirtieth day of September, one thousand eight hundred and thirty-five, (1835,) being the same deeded by the said party of the second part to the said party of the first part, this day, and to secure the purchase money thereof this deed of mortgage is given. To have and to hold the above bargained premises to the said party of the second part, his heirs and assigns, to the sole and only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever. Provided, always, and these presents are upon this express condition, that if the said party of the first part, his heirs, executors, administrators or assigns, shall well and truly pay or cause to be paid to the said party of the second part, his heirs, executors, administrators or assigns, the sum of three thousand seven hundred dollars, in four equal annual payments, with annual interest, on the twenty-seventh day of July of each year, according to the condition of a certain bond or writing obligatory, bearing even date herewith, executed by James H. Rogers, the said party of the first part, to the said party of the second part, as a collateral security, then these presents and the said bond or writing obligatory shall cease and be null and void. And the said James H. Rogers, the party of the first part, for himself, his heirs, executors and administrators, doth covenant, promise, grant and agree to and with the said party of the second part, his heirs, executors, administrators and assigns, that he will well and truly pay or cause to be paid unto the said party of the second part, his heirs, executors, administrators or assigns, the said sum of three thousand seven hundred dollars and annual interest at the time and in the manner above mentioned. And in case of the non-payment of the said sum of three thousand seven hundred dollars and annual interest, or any part thereof, at the time or times above limited for the payment thereof, then, and in such case, it shall and may be lawful for the said party of the second part, his heirs, executors, administrators or assigns, and the said party of the first

part doth hereby covenant and agree, and by these presents empower and authorize the said party of the second part, his heirs, executors administrators or assigns, to grant, bargain, sell, release, and convey the said premises, with the appurtenances thereunto belonging, at public auction or vendue, and, on such sale, to make and execute to the purchaser or purchasers, his, her or their heirs and assigns forever, good, ample and sufficient deeds of conveyance in the law, pursuant to the statute in such case made and provided, rendering the surplus monies, if any there be, to the said party of the first part, his heirs, executors, administrators or assigns, after deducting the costs and charges of such vendue and sale as aforesaid.

In witness whereof, the party of the first part hath hereunto set his hand and seal the day and year first above written.

JAS. H. ROGERS, [SEAL.]

Sealed and delivered
in presence of
H. S. HOSMER,
JNO. P. HILTON.

TERRITORY OF WISCONSIN, }
Milwaukie County. } *ss.*

On this twenty-seventh day of July, A. D., 1837, personally came before me the within named James H. Rogers, to me known, and acknowledged that he executed the within mortgage for the uses and purposes therein mentioned.

JOHN P. HILTON,
Superior Court Commissioner.

Recorded 27th July, A. D., 1857, }
at 6 o'clock P. M. }

STATE OF WISCONSIN, }
Milwaukie County. } Register's Office.

I hereby certify, that the foregoing is a true and correct transcript from the records in my Office, of the foregoing instrument recorded in volume "A" of mortgages on pages 298, 299, 300 and 301, and has been by me carefully compared with said records, and that it is the whole thereof.

In testimony whereof, I have hereunto set my hand this eighth day of December, A. D., 1859.

SAMUEL WAEGLI,
Register, Milwaukie County, Wis.

by FRED. SCHLOEMILCH,
Deputy.

Deed.

Clinton Walworth, Master in Chancery, to Herman V. Prentice—Deed:

This indenture, made the fifth day of October, in the year of our Lord one thousand eight hundred and forty, between Clinton Walworth, a Master in Chancery, in and for the county of Milwaukie, Wisconsin Territory, of the first part, and Herman V. Prentice, of the State of New York, of the second part. Whereas, at the June term of the District Court, in and for the county of Milwaukie, sitting as a Court of Chancery, held at the Court House, in and for said county, on the twenty-sixth day of June, in the year of our Lord one thousand eight hundred and forty, it was, among other things, ordered, adjudged and decreed by the said Court, in a certain cause then depending in the said Court, between Herman V. Prentice, complainant, and James H. Rogers, et. al., defendants; that the whole of the mortgaged premises, mentioned and set forth in the pleadings in this cause, be sold by a Master of this Court, at public auction, the said Master first giving six weeks' public notice of the time and place of such sale, with a brief description of such mortgaged premises, in one of the public newspapers printed in said county. And whereas, the said Clinton Walworth, Master in Chancery, and party of the first part, to these presents, in pursuance of the said order and decree of the said Court in Chancery, did, on the day of the date of these presents, sell at public auction at the Court House, in the town of Milwaukie in said county, the said mortgaged premises hereinafter particularly described, having first given six weeks' previous notice in a newspaper published in said county of Milwaukie, of the time and place of said sale, with a brief description of such mortgaged premises, agreeable to the order aforesaid, at which sale the said premises were struck off to the said party of the second part to these presents, for the sum of two thousand dollars, it being the highest sum bidden for the same, and he being the highest bidder therefor. Now, therefore, this present indenture witnesseth that the said Clinton Walworth, Master in Chancery as aforesaid, and party of the first part to these presents, in order to carry into effect the sale so made by him as aforesaid, in pursuance of the said decree as aforesaid, of the said Court of Chancery, and also by virtue of the statute in such case made and provided, and in consideration of the premises, and of the said sum of two thousand dollars paid by the said party of the second part to these presents, to the said Clinton Walworth, Master in Chancery as aforesaid, the receipt whereof he doth hereby confess, hath granted, bargained and

sold, aliened, released, conveyed and confirmed, and by these presents doth grant, bargain, sell, alien, release, convey and confirm unto the said party of the second part, and to his heirs and assigns the following premises, to wit: The equal undivided half-part or share of that certain tract of land bounded and described as follows, viz: Beginning in the centre of the Milwaukie river, at the centre of the street represented on the recorded plat of the village of "Mechanicsville" as running East and West between blocks five (5) and six (6) in said village of "Mechanicsville," running thence easterly in the centre of said street to the centre of a street running North and South between blocks three (3) and five (5) in Mechanicsville aforesaid; thence Southerly in the centre of said last-mentioned street to the centre of a street running East and West between blocks three (3) and four (4) in said village of Mechanicsville; thence Easterly in the centre of said last-mentioned street to a point that would be intersected by a North and South line through the middle of block three (3) in Mechanicsville aforesaid; thence Southerly on the line bounding the West end of lots one, two, three and four in block four in Mechanicsville aforesaid to the South line of lot four in block four aforesaid; thence Easterly on the South line of said lot four in block four, to the West line of a tract of land containing about one-half of an acre represented on said plat of Mechanicsville, as being nearly in a square form, in the South-East corner of the town plat of Mechanicsville aforesaid; thence Southerly on the West line of said last described tract of land to the South line of the town plat of Mechanicsville; thence Easterly on the said last mentioned line to the East line of fractional lot two in section No. four in township seven, North of range twenty-two, thence South to the South line of said fractional lot No. two; thence Westerly on the South line of said fractional lot No. two to the centre of Milwaukie river; thence Northerly in the centre of said Milwaukie river, as it winds and turns to the place of beginning, be the same more or less; also an equal undivided one-third part of the saw-mill situated upon said premises, with the privileges, implements and appurtenances thereunto attached and belonging, together with the privilege of damming and flowing the Milwaukie river at any point on said fractional lot No. two, as high as the said river would be raised by maintaining a dam at least nine feet high, where the saw-mill dam is now located across said river, near the South line of said fractional lot No. two; also all the rents and profits due and to accrue on a certain lease executed by Daniel Bigelow and James H. Rogers and Samuel Hinman, bearing date the thirtieth day of September, one thousand eight hundred and thirty-five, (1835,) being the same premises deeded by the said party of the second

part, (to mortgage herein,) to said party of the first part this day, (the day of date of said mortgage,) and to secure the purchase money thereof, the said deed of mortgage was given. Together with all and singular, the rights, members, privileges, hereditaments and appurtenances to the same belonging, or in anywise appertaining. To have and to hold the said premises above described, and hereby intended to be conveyed unto the said party of the second part, his heirs and assigns, to his and their only proper use, benefit and behoof forever.

In witness whereof, I have hereunto set my hand and seal, the day and year first above written.

CLINTON WALWORTH, [SEAL.]
Master in Chancery.

Signed, sealed and delivered,
in presence of
THOMAS J. NOYES,
JAMES W. MARTIN.

Territory of Wisconsin, } ss.
Milwaukie County. } On this fifth day of October, A. D., 1840, before me personally appeared Clinton Walworth, Esq., Master in Chancery, known to me to be the same person described in and who executed this indenture, and he duly acknowledged that he had executed the same for the uses and purposes therein mentioned, let it be recorded.

Recorded 6th day of October, A. D., 1840, at 10 o'clock, A. M. } D. A. J. UPHAN, Sup. Court Com.

State of Wisconsin, } Register's Office.
Milwaukie County. }

I hereby certify that the foregoing is a true and correct transcript from the records in my office of the foregoing instrument recorded in volume "C" of mortages on pages 5 and 6, and has been by me carefully compared with said records, and that it is the whole thereof.

In testimony whereof, I have hereunto set my hand this seventh day of December, A. D., 1859.

SAMUEL WAEGLI,
Register of Mil. Co. Wis.

FRED. SCHLOEMILCH,
Deputy.

Q. C. Deed.

Herman V. Prentice to Sanford E. Church and Thomas T. Clark, Q. C. Deed:

This indenture, made the fourth day of August, in the year of our Lord one thousand eight hundred and forty-seven, between

Herman V. Prentice, of Albion, Orleans county, New York, of the first part, and Sanford E. Church, and Thomas T. Clark, of the same place, of the second part, Witnesseth, that the said party of the first part, for and in consideration of the sum of ten dollars to him in hand, paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has bargained, sold, remised, and quit claimed, and by these presents does bargain, sell, remise, and quit claim unto the said parties of the second part, and to his assigns forever, all that certain piece or parcel of land situated in the village of Mechanicsville, in the town and county of Milwaukie, in the territory of Wisconsin, and which is particularly described in a deed of the same from Daniel Bigelow, and Amasa Bigelow, to the said party of the first part, bearing date the 29th day of June, 1837, and recorded in the Register's Office of Milwaukie county, the 30th day of June, 1837, in volume C of deeds, at pages 329, &c., to which, for the particular description of said land, reference is hereby made. Also, all the following lots situated in the city, town, and county of Milwaukie, aforesaid, conveyed to the said party of the first part by Daniel S. Hollister and wife, by deed bearing date the 15th day of May, 1837, and recorded in said Register's Office, the 17th day of May, 1837, in vol. D of deeds, at page 392, and which lots have been since ascertained by partition, and are now known and designated as lots number thirteen and sixteen in block number 86, lot number one (1) in block number (147) one hundred and forty-seven, and lots thirteen and fourteen in block number one hundred and fifty-five (155,) according to the partition of fractional 1 of section 29, together with all and singular, the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim or demand whatsoever of the said part of the first part, either in law or equity of, in, and to the above bargained premises, with the hereditaments and appurtenances—to have and to hold the said lands and premises above described or intended so to be to the said parties of the second part, their assigns to the sole and only proper use, benefit, and behoof of the said parties of the second part their assigns forever—in trust, nevertheless, for the benefit of the creditors of said Herman V. Prentice, according to the provisions and conditions of an assignment bearing even date with these presents made by the said party of the first part to the said parties of the second part.

In witness whereof, the parties of the first part has hereunto set his hand and seal the day and year first above written.

Signed, sealed and delivered in presence of
NOAH DAVIS,
AUSTIN DAY.

The words "thirteen," interlined before delivery, and this deed re-witnessed and re-acknowledged after such alteration.

H. V. PRENTICE, [SEAL.]

STATE OF NEW YORK,
Orleans county, Clerk's Office. } *ss.*

I certify that Edwin R. Reynolds, Esq., was, at the date of the certificate of proof or acknowledgment of the annexed instrument, a Justice of the Peace in and for said county, authorized by law to take the same, and that I am well acquainted with his hand-writing, and verily believe that the signature to said certificate is genuine, and that said instrument is executed according to the laws of this State, and entitled to record.

In witness whereof, I have hereunto set my hand and affixed the seal of said county at Albion, this 7th day of July, 1848.

[SEAL.]

E. T. STRONG,
Deputy Clerk.

STATE OF NEW YORK,
Orleans County. } *ss.*

On this 4th day of July, 1848, personally appeared before me Herman V. Prentice, to me known to be the grantor described in and who executed the within conveyance, and acknowledged the execution of the same.

E. R. REYNOLDS,
Justice of the Peace.

Recorded July 22d, A. D., 1848, at 10 o'clock, A. M.

STATE OF WISCONSIN,
Milwaukie County. }

Register's Office.

I hereby certify that the foregoing is a true and correct transcript from the records of my office, of the foregoing instruments recorded in volume twenty-five of deeds on pages 130 and 131, and has been by me carefully compared with said records, and that it is the whole thereof.

In testimony whereof, I have hereunto set my hand this eighth day of December, A. D., 1859.

SAMUEL WAEGLI,
Register, Milwaukie County, Wisconsin.

By FRED. SCHLOEMILCH,
Deputy.

Q. C. Deed.

Sanford E. Church and Thomas S. Clark (assignees) to John B. Lee, Q. C. D.:

This indenture, made the seventh day of July, in the year of our Lord one thousand eight hundred and forty-eight, between Sanford E. Church and Thomas S. Clark, (assignees of H. V. Prentice,) of Albion, Orleans county, N. Y., of the first part, and John B. Lee, of the same place, of the second part, Witnesseth, that the said parties of the first part, for and in consideration of the sum of thirteen hundred dollars to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, have bargained, sold, remised and quit claimed, and by these presents do bargain, sell, remise and quit claim, unto the said party of the second part, and to his heirs and assigns forever, all that certain piece or parcel of land situated in the village of Mechanicsville in the town and county of Milwaukie, in the State of Wisconsin, and which is particularly described in a deed of the same from Daniel Bigelow and Amasa Bigelow to Herman V. Prentice, bearing date the 29th day of June, 1837, and recorded in the Register's Office of Milwaukie county, on the 30th day of June, 1837, in Vol. C of deeds, at pages 329, &c., to which deed reference is hereby made. Also, all the following lots situate in the city, town and county of Milwaukie aforesaid, conveyed to the said Herman V. Prentice by David S. Hollister and wife, by deed bearing date the fifteenth day of May, 1837, and recorded in said Register's Office, the 17th day of May, 1837, in Vol. D of deeds, at page 392, &c., which lots have been since ascertained by partition, and are now known and designated as lots numbers thirteen and sixteen in block number 86, lot number one (1) in block number (147) one hundred and forty-seven, and lots thirteen and fourteen in block one hundred and fifty-five, (155,) according to the partition of fraction 6 of section 29, all the above premises were conveyed to said Church and Clark by Henry V. Prentice, by deed bearing date August 4, 1847. Together with all and singular, the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever of the said parties of the first part, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances, to have and to hold the said above described premises to the said party of the second part, his heirs and assigns, to the sole and only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

SANFORD E. CHURCH, [SEAL.]
THOS. S. CLARK, [SEAL.]

Signed, sealed and delivered
in presence of
NOAH DAVIES, JR.
SIDNEY SMITH.

The word "territory" erased, and the word "State" interlined in 9 lines from top, and the words, "the said party of the first part" erased, and the words, "Herman V. Prentice" interlined in "10" lines from top before signing.

STATE OF NEW YORK, }
Orleans County. } *ss.*

On this 7th day of July, 1848, before me came Sanford E. Church and Thomas S. Clark, to me known to be the individuals described in and who executed the within instrument, and severally acknowledged that they executed the same.

H. R. CURTIS,
County Judge.

STATE OF NEW YORK, }
Orleans County, Clerk's Office. } *ss.*

I certify that Henry R. Curtis, Esq., was, at the date of the certificate of proof or acknowledgment of the annexed instrument, a Judge of the Court in and for said county, authorized by law to take the same, and that I am well acquainted with his handwriting, and verily believe that the signature to said certificate is genuine, and that said instrument is executed according to the laws of this State, and entitled to record.

In witness whereof I have hereunto set my hand and affixed the seal of said county of Albion, this 7th day of July, 1848.

[SEAL.] E. T. STRONG,
Deputy Clerk.

Recorded July 22d, A. D., 1848, at 10½ o'clock, A. M.

STATE OF WISCONSIN, }
Milwaukie county. }

Register's Office.

I hereby certify that the foregoing is a true and correct transcript from the records in my office, of the foregoing instrument, recorded in volume twenty-five of deeds, on pages 136 and 137, and has been by me carefully compared with said records, and that it is the whole thereof.

In testimony whereof I have hereunto set my hand this eighth day of December, A. D., 1859. SAMUEL WAEGLI,
Register, Milwaukie County, Winconsin.

By FRED. SCHLOEMILCH,
Deputy.

Q. C. Deed.

Herman V. Prentice and wife to John B. Lee. Q. C. Deed.

This indenture, made the first day of October, in the year of our Lord one thousand eight hundred and fifty-five, between Herman V. Prentice, of Waukesha county, Wisconsin, and Jane D. his wife, parties of the first part, and John B. Lee, of Orleans county, in the State of New York, party of the second part, Witnesseth that the said parties of the first part, for and in consideration of the sum of one dollar, to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, have given, granted, bargained, sold, remised, released and quit claimed, and by these presents do give, grant, bargain, sell, remise, release and quit claim, unto the said party of the second part and to his heirs and assigns forever. All the following described real estate, situated in the county of Milwaukie and State of Wisconsin, to wit: All their right, title and interest in and to lot or fraction number two (2) in section four (4) in township seven (7,) north of range twenty-two (22.) To have and to hold the same together with all and singular, the appurtenances and privileges thereunto belonging or in anywise thereunto appertaining, and all the estate, right, title, interest, and claim whatsoever of the said party of the first part, either in law or equity, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever. In witness whereof, the said parties of the first part, have hereunto set their hands and seals the day and year first above written.

H. V. PRENTICE, [SEAL.]
JANE D. PRENTICE, [SEAL.]

Signed, sealed and delivered
in presence of
MARY A. LEE,
W. W. TREADWAY.

STATE OF WISCONSIN, }
Waukesha County. } *ss.*

Be it remembered, that on this 3d day of October, A. D., 1855, the said Herman V. Prentice and Jane D., his wife, who are to me personally known, appeared before me and acknowledged the foregoing instrument to be their free act and deed.

Recorded October 5th, A. D., 1855, at 8 o'clock, A. M.

W. W. TREADWAY,
Justice of the Peace.

STATE OF WISCONSIN, Milwaukie County. } Register's Office.

I hereby certify that the foregoing is a true and correct transcript from the Records in my office of the foregoing instrument, recorded in volume fifty of deeds on page 17, and has been by me carefully compared with said Records, and that it is the whole thereof.

In testimony whereof I have hereunto set my hand this 8th day of December, A. D., 1859.

SAMUEL WAEGLI,
Register, Milwaukie County, Wisconsin.

By FRED. SCHLOEMILCH,
Deputy.

Defendant's Testimony.

The following testimony was read on the part of the defendant.

UNITED STATES DISTRICT COURT,
In and for the District of Wisconsin.

JOHN B. LEE,
vs.
JOSIAH A. NOONAN, and others.

It is stipulated and agreed by and between the plaintiff and defendant Noonan, by their respective solicitors, that it shall be admitted at the hearing of this cause, as evidence, that there is on the back of the bond, mentioned in the bill of complaint, a stipulation or agreement, the same as set up in the answer of said Noonan.

Also, that certified copies of records may be admitted as evidence at the hearing, (subject to objections other than that they were not filed and offered in time.)

Also, that either or both parties may take testimony in this action before John A. Savage, U. S. Court Commissioner, at his office in Milwaukie, on the 12th day of September, 1859, and adjourn from day to day till the same is taken, without issuing a commission, and also before said Savage at any other time before the first Monday of October next, on giving two days' notice to the opposite party.

J. DOWNER,
Solicitor for Noonan.

OGDEN, BROWN & OGDEN,
Solicitor for Plaintiff.

September 4th, 1859.

U. S. DISTRICT COURT,
District of Wisconsin.

JOHN B. LEE,
vs.
JOSIAH A. NOONAN, ET. AL. } In Equity.

Deposition of J. H. Rogers.

Deposition of James H. Rogers, taken before the undersigned U. S. Commissioner at his office in the city of Milwaukie, on the 12th day of September, 1859, on the part of the defendant, Josiah A. Noonan, pursuant to stipulation of the parties hereto attached. At which time and place appeared the complainant, by his solicitors, Messrs. Ogden, Brown & Ogden, and the defendant Noonan, by his solicitor, Jason Downer, Esq., and the said deponent being first duly sworn, was examined on the verbal interrogatories propounded by the respective solicitors, and their answers reduced to writing, by said commissioner, and read over to and subscribed by said deponent.

JOHN A. SAVAGE, JR.
U. S. Commissioner.

James H. Rogers, being duly sworn, on oath deposed and said:

I know the complainant and defendant Noonan; I know lot No. 1, section No. 4, town 7 north, range 22 east in Milwaukie county; I was once in possession of that lot; I was in possession of the lot in August, 1836; I think claiming at that time an undivided portion of it; I think I never claimed the title to the whole of it; I think I owned the whole of said lot included in the plat, except two village lots as laid out in a pretended plat of Mechanicsville. I claimed lot two under deeds from Daniel Bigelow, Daniel Bigelow, Jr., and Amasa Bigelow, and tax deeds from the territory and State of Wisconsin, and perhaps some other deeds, copies of some of which deeds are marked "A," "B," "C," "D," "E," and originals marked "G," "H," "I," and "J," (said deeds hereto attached, marked exhibits A, B, C, D, E, and F, G, H, I, and J.)

I claimed all the portion of lot two embraced in the tax deeds here shown, or of which copies are exhibited, together with the original deeds.

There were some improvements on said lot two, when I was in possession. There was two or three houses and a saw-mill on the lot; one of which houses and the mill, was occupied. The mill and lot two, was occupied by Bigelow and myself jointly at first. In 1836, all the lot was enclosed but about eighteen acres.

I think in 1840 or 1841, I had exclusive possession of all that part of lot two, embraced in the pretended plat of Mechanicsville, and embraced in the mortgage mentioned in the bill of complaint in this cause. The mill was near the southern line of plat. The land described in the bill of complaint, was all enclosed except a small part used as a log way to roll logs down the bank to the mill-pond. At the time I claimed to be the exclusive owner in 1840 or 1841. At this time I claimed exclusive title to all the premises embraced in the mortgage under any tax deed and other conveyances.

I kept exclusive possession of those premises up to the time I sold Zelatus A. Colton and Sanford D. Colton on the 22d of June, 1847. A copy of which deed is here shown me marked "K," (hereto attached, marked exhibit K.) There were two persons here at that time named Daniel Bigelow and Daniel Bigelow, Jr. I knew them both.

Cross-examined.

I speak of the "pretended plat" of Mechanicsville, because everybody else called it so. It is from impressions I have got of it. That plat of Mechanicsville was publicly known. It was notoriously known to be situated on lot two before referred to. It was well enough known where the ground was in which the plat was laid out.

I was in possession of the lot by having a man on it named John Weston, and kept him there. After Weston left, John Craig was on it for two years. There was spell when I did not have a man on it. I did not sell any of the lot two before I sold to Coltons, after 1841.

I remember mortgaging the land described in the bill of complaint to H. V. Prentiss, in July, 1837, to secure a part of the purchase money of the premises described in the mortgage mentioned in the bill of complaint.

The mortgage to Prentiss was foreclosed, and the land sold in 1840. I claimed that Prentiss, for some reason, had a defective title, and I was so advised by counsel, and I claimed it under the tax titles I had at the time, and those I acquired afterwards.

I can't remember what arrangement I made with Prentiss. Mr. Prentiss took a judgment against me. I paid $800, or $1,100 to get rid of the judgment.

I am not positive that there was no amicable arrangement between Prentiss and myself, by which he was to have back the land. I don't recollect having any conversation with Prentiss after he bid on the land or the foreclosure sale, about his keeping possesion of the land. I had a conversation with Lee, the complainant, about the same matter, but I can't remember what was

said. I obtained possession of the remaining undivided half of the premises from Daniel Bigelow or David Bigelow, Jr.

Direct resumed.

Mr. Prentiss, and those claiming under him, never to my knowledge had possession of the premises described in the bill of complaint.

Cross-examined.

I think I had a man on the premises at the time I made the deed to the Coltons. JAMES H. ROGERS.

Exhibit "A."

Daniel Bigelow to James H. Rogers—Deed.

This indenture, made the nineteenth day of May, in the year of our Lord one thousand eight hundred and thirty-six, between Daniel Bigelow, of the county of Milwaukie, Territory of Wisconsin, of the first part, and James H. Rogers, of the same county and Territory, of the second part, Witnesseth, that the said party of the first part, for and in consideration of the sum of nine thousand dollars lawful money, to him in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, hath granted, bargained, sold, remised, released, aliened and confirmed, and by these presents doth grant, bargain, sell, remise, release, alien, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, eighteen acres of land, equal and undivided, situate, lying and being in the county of Milwaukie, and Territory of Wisconsin, and described as follows, to wit: Eighteen acres, equal and undivided, in lot number two (2) in section number four (4) in Township number seven (7) north, in range number twenty-two (22) east, excepting three acres situate in the north-west corner of said lot, with the water privilege belonging to the same. Also excepting the blocks numbers one (1) and two (2) in the town plat of Mechanicsville, as laid off on said lot, said eighteen acres is to include an equal and undivided half-part and share of the water privilege belonging to said lot below and south of the above described three acres. Also an undivided half-part and share of the saw-mill and out-buildings on said lot. Together with all and singular, the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim or demand whatsoever, of the said party of the first part, whether in law or equity, of, in and to the above bargained premises, with the same hereditament appurtenances, to have and to hold the said

premises above described, with the appurtenances, unto the said party of the second part, and to himself, his heirs and assigns forever; and the said party of the first part, for himself, his heirs, executors and administrators, doth covenant, grant, bargain and agree to and with the said party of the second part, and his heirs and assigns, that at the time of the ensealing and delivery of these presents, he is well seized of the premises above conveyed, as of a good, sure, perfect, absolute and indefeasible estate of inheritance in the law in fee simple; and that the above bargained premises of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, he will forever warrant and defend.

In witness whereof, the said party of the first part hath hereunto set his hand and seal, the day and year first above written.

DANIEL BIGELOW, [SEAL.]

Sealed and delivered
in presence of
[The word "west" interlined before signing; the word "fraction" erased before do.]
PHILANDER BIRD,
E. W. EDGERTON.

TERRITORY OF MICHIGAN, } *ss.*
Milwaukie County. }

Be it remembered, that on the 26th day of May, A. D., 1836, came personally before me Albert Fowler, a Justice of the Peace, in and for said county, the within named Daniel Bigelow, to me known, and acknowledged to have signed, sealed and delivered the within deed for the uses and purposes therein mentioned.

Given under my hand and seal, the day and year above written.

ALBERT FOWLER, [SEAL.]
Justice of the Peace.

Recorded May 26th, A. D., 1836, }
at 2 o'clock P. M. }

STATE OF WISCONSIN, }
Milwaukie county. }

Register's Office.

I hereby certify that the foregoing is a true and correct transcript from the records in my office, of the foregoing instrument recorded in volume "A" of deeds, on pages 433 and 434, and has been by me carefully compared with said records, and that it is the whole thereof.

In testimony whereof I have hereunto set my hand this fifth day of September, A. D., 1859.

SAMUEL WAEGLI,
Register, Milwaukie county, Wisconsin.

By FRED. SCHLOEMILCH,
Deputy.

Exhibit B referred to in the deposition of James H. Rogers.

Exhibit B. Daniel Bigelow to James H. Rogers.

Deed.

This indenture, made this sixth day of March, in the year of our Lord one thousand eight hundred and forty-one, between Daniel Bigelow, Jr., of the county of Walworth, territory of Wisconsin, of the first part, and James H. Rogers, of the town and county of Milwaukie, of the second part, Witnesseth, that the said party of the first part, for and in consideration of the sum of five hundred dollars, lawful money of the United States, in hand, paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath remised, released, quit claimed, and by these presents doth remise, release, and quit claim unto the said party of the second part, and to his heirs and assigns forever, *all the right*, title and interest in to that tract or parcel of land, lying and being in the town and county of Milwaukie, aforesaid, and known and distinguished as lot No. two in section number four in township number seven, north of range number twenty-two east, together with the right and privilege of the water power thereon, including dam, together with all and singular, the hereditaments and appurtenances thereon belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, and interest, claim or demand whatever of the said party of the first part, either in law or equity, of, in, and to the above bargained premises, and every part and parcel thereof, to the said party of the second part, his heirs and assigns, to the sole and only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever. In witness whereof, the said party of the first part hath hereunto set his hand and seal the day and year first above written. The erasure in the twelfth line from the top made before signing, interlined in the tenth line from the top made before signing.

DANIEL BIGELOW, [SEAL.]

Signed, sealed and delivered
in the presence of
A. FINCH, Jr.,
WM. A. PRENTISS.

Territory of Wisconsin, Milwaukie County. } ss. On this sixth day of March, A. D., 1841, personally appeared before me A. Finch, Jr., a Justice of the peace, in and for the county aforesaid, Daniel Bigelow, Jr., the above named grantor, who acknowledged that he executed the foregoing deed of conveyance for the uses and purposes therein mentioned.

A. FINCH, Jr.
Justice of the Peace.

Recorded 5th day of March, A. D., 1841, at ½ past 7 o'clock, P. M.

STATE OF WISCONSIN, Milwaukie County. } ss.

Register's Office.

I hereby certify that the foregoing is a true and correct transcript from the records in my office, of the foregoing instrument, recorded in volume "H" of deeds on pages 4 and 5, and has been by me carefully compared with said records, and that it is the whole thereof.

In testimony whereof I have hereunto set my hand this fifth day of September, A. D., 1859.

SAMUEL WAEGLI,
Register, Milwaukie County, Wisconsin.

By FRED. SCHLOEMILCH,
Deputy.

Exhibit C.

Exhibit C, referred to in the deposition of James H. Rogers.

Wisconsin Territory, to James H. Rogers, Deed:

TERRITORY OF WISCONSIN, County of Milwaukie. } ss.

To all to whom these presents come, greeting: Whereas, the town taxes for the year one thousand eight hundred and forty-four, charged upon the following described pieces or parcels of land, were raised by a vote of a legal town meeting in the town in which said lands are situated, and assessed by assessors duly chosen and qualified, and in pursuance of law. Whereas, the county taxes assessed upon said lands for said year were duly ordered and authorized to be so assessed by the Board of County Supervisors of said county, and were assessed in pursuance of law, and whereas, the assessment roll of said town was completed and a transcript thereof committed to the Collector of said town

for the collection of the taxes therein charged and by him duly returned, all in pursuance of the law, and whereas, said pieces or parcels of land were returned to the Treasurer of said county as delinquent for the following taxes, to wit: town and county taxes, and said delinquent taxes, assessed and charged thereon, unpaid, said return being made in pursuance of law. And whereas, the said Treasurer did thereupon give the requisite notice of the time and place of the sale of said lands for said delinquent taxes, and did, on the tenth day of April, in the year one thousand eight hundred and forty-five, the day of the date specified in said notice, sell, pursuant to law, to James H. Rogers the following described lots or tracts of land in Mechanicsville, of the town of Milwaukie in said county, to wit: lots, one, two, three, four, five and six, (1, 2, 3, 4, 5 and 6,) in block number eight, (8,) lots one, two and ten, (1, 2 and 10,) in block number one (1); lots one, two, three, four, five, six, seven, eight, nine and ten, (1, 2, 3, 4, 5, 6, 7, 8, 9 and 10,) in block number seven (7); lots one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve, (1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12,) in block No. six (6); lots one, two, three and four (1, 2, 3 and 4) in block number nine (9); lots No. eleven and twelve (11 and 12) in block No. two (2,) for the sum of sixteen cents each, and in the aggregate for the sum of five dollars and ninety-two cents, being the amount of said delinquent town and county taxes and charges for the year one thousand eight hundred and forty-four, and did issue certificate of sale thereof to the said purchaser, and whereas, the time allotted by law for the redemption of said premises, expired on the tenth day of April, one thousand eight hundred and forty-eight, and whereas, it appears by the records in this office, that said lots or tracts of land have not been redeemed according to law, and in consequence thereof the said purchaser or his assigns has become entitled to a deed of conveyance for the same from the proper officer, and whereas, it appears that James H. Rogers is the lawful assignee and owner of said certificates—now, therefore, know all men by these presents, that in the name of the Territory of Wisconsin, I, Charles P. Ewerts, Clerk of the Board of Supervisors for the county aforesaid, by virtue of the authority in me vested by an act entitled, an "act to provide for the government of the several towns in this Territory, and for the revision of county government," approved February 18th, A. D., 1841, in consideration of the premises, do by these presents, grant, bargain, sell, convey and confirm unto the said James H. Rogers, heirs and assigns forever, all the above described lots or tracts of land, together with all and singular, the privileges and appurtenances thereunto belonging, to have and to hold the same, with

the privileges and appurtenances, to the said James H. Rogers, his heirs and assigns forever.

In testimony whereof I, Charles P. Ewerts, the said Clerk, have hereunto set my hand and affixed the Supervisors' [SEAL.] seal, at Milwaukie county, in the Territory of Wisconsin, the twelfth day of April, in the year of our Lord one thousand eight hundred and forty-eight.

CHARLES P. EWERTS,
Clerk of the Board of Supervisors.

In presence of
WALTER S. EWERTS,
C. WALWORTH.

STATE OF WISCONSIN, }
County of Milwaukie. } *ss.*

On this thirteenth day of April, A. D., 1848, came before me the above named Charles P. Ewerts, Clerk aforesaid, and acknowledged that he executed the above deed for the uses and purposes therein mentioned.

CLINTON WALWORTH,
Justice of the Peace.

Recorded April 13th, A. D., 1848, at 9 o'clock, A. M.

STATE OF WISCONSIN, }
Milwaukie County. }

Register's Office.

I hereby certify that the foregoing is a true and correct transcript from the records in my office, of the foregoing instrument, recorded in volume twenty-three of deeds, on pages 590 and 591, and has been by me carefully compared with said records, and that it is the whole thereof.

In testimony whereof I have hereunto set my hand this tenth day of September, A. D., 1859.

SAMUEL WAEGLI,
Register, Wilwaukie County, Wisconsin.

By FRED. SCHLOEMILCH,
Deputy.

Exhibit "D."

Exhibit D, referred to in deposition of James H. Rogers.

State of Wisconsin, to James H. Rogers:

STATE OF WISCONSIN, }
County of Milwaukie. } *ss.*

To all to whom these presents shall come, *greeting:*

Whereas, the town taxes for the year one thousand eight hundred and forty-five, charged upon the following described pieces

or parcels of land, were raised by a vote of a legal town meeting of the town in which said lands are situated, and assessed, by assessors duly chosen and qualified, and in pursuance of law. And whereas, the county and Territorial taxes assessed upon those lands for said year, were duly ordered and authorized to be so assessed by the Board of County Supervisors of said county, and were assessed in pursuance of law. And whereas, the assessment roll of said town was completed, and a transcript thereof committed to the Collector of said town for the collection of the taxes therein charged, and by him duly returned, all in pursuance of law. And whereas, the said pieces or parcels of land were returned to the Treasurer of said county as delinquent for the following taxes, to wit: Town, County, and Territorial taxes; and the said delinquent taxes, assessed and charged thereon, unpaid, said return being made in pursuance of law. And whereas, the said Treasurer did thereupon give the requisite notice of the time and place of the sale of said lands for said delinquent taxes, and did, on the sixteenth day of April, in the year one thousand eight hundred and forty-six, the day of the date specified in said notice, sell, pursuant to law, to James H. Rogers, lot number one, two and ten, in block number one; lots number one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve, in block number six; lots number one, two, three, four, five, six, seven, eight, nine, ten, in block number seven; lots number one, two, three, four, five and six, in block number eight; and lots number one, two, three and four, in block number nine in Mechanicsville, for the sum of seventeen cents for each and every of above described lots, the same being located in the town and county of Milwaukie, and in the aggregate for the sum of five dollars, ninety-five cents, being the amount of the said delinquent town, county and Territorial taxes for the year one thousand eight hundred and forty-five, and did issue certificate of sale thereof, to the said purchaser. And whereas, the time allowed by law for the redemption of said premises expired on the sixteenth day of April, one thousand eight hundred and forty-nine. And whereas, it appears by the records in this office, that said above described lots have not been redeemed according to law, and in consequence thereof, the said purchaser or his assigns have become entitled to a deed of conveyance of the same from the proper officer. And whereas, it appears that James H. Rogers is the lawful assignee and owner of said certificate.

Now, therefore, know all men by these presents, that in the name of the State of Wisconsin, I, Charles Lorenzen, Clerk of the Board of Supervisors for the county aforesaid, by virtue of the authority in me vested by an act entitled, "An act to pro-

vide for the government of the several towns in the Territory, and for the revision of the county government," approved February 18th, A. D., 1841, and in consideration of the premises, do by these presents, grant, bargain, sell, convey and confirm unto the said James H. Rogers, his heirs and assigns forever, all the said above described lots. Together with all and singular, the privileges and appurtenances thereunto belonging; to have and to hold the same, with the privileges and appurtenances, to the said James H. Rogers, his heirs and assigns forever.

In testimony whereof I, Charles Lorenzen, the said clerk, have hereunto set my hand and affixed the Supervisors' seal at Milwaukie, in the State of Wisconsin, this seventeenth day of April, in the year of our Lord one thousand eight hundred and forty-nine.

[SEAL.] CHARLES LORENZEN,
Clerk of the Board of Supervisors.

In the presence of
THOMAS M. KNOX,
WALTER S. EWERTS.

STATE OF WISCONSIN,
County of Milwaukie. } *ss.*

On this seventeenth day of April, A. D., 1849, came before me the above named Charles Lorenzen, clerk aforesaid, and acknowledged that he executed the above deed for the uses and purposes therein mentioned.

Recorded April 17th, 1849, at 8 o'clock, A. M.

WALTER S. EWERTS, [SEAL.]
Notary Public Milwaukie County.

STATE OF WISCONSIN,
Milwaukie County. } *ss.*

Register's Office.

I hereby certify that the following is a true and correct transcript from the records of my office, of the foregoing instrument, recorded in volume twenty-six of Deeds, on pages 404 and 405, and has been by me carefully compared with said records, and that it is the whole thereof.

In testimony whereof I have hereunto set my hand this tenth day of September, A. D., 1859. SAMUEL WAEGLI,
Register Milwaukie County, Wis.

By FRED. SCHLOEMILCH,
Deputy.

Exhibit "E."

Wisconsin Territory to James H. Rogers.

Deed.

TERRITORY OF WISCONSIN, Milwaukie County. } *ss.*

To all to whom these presents come, *greeting:*

Whereas, the Collector of the County of Milwaukie, in the Territory of Wisconsin, did, on the fourteenth day of December, in the year of our Lord one thousand eight hundred and forty, in pursuance of law, sell to John Corbin, lots one and ten in block one, for the sum of thirty cents each; lot two in block one, for the sum of twenty-eight cents; lots one, two, three, four, five, six, seven, eight, nine and ten, in block three, for the sum of thirty cents each; lots two, five, six, seven and eight, in block two, for the sum of twenty-eight cents each; lots one, two, three and four, in block four, for the sum of twenty-eight cents each; lots one and six, in block five, for the sum of thirty cents each; lots one and twelve, in block six, for the sum of thirty cents each; lots two, three, four, five, six, seven, eight, nine, ten and eleven, in block six, for the sum of twenty-eight cents each; lots one and ten, in block seven, for the sum of thirty cents each; lots two, three, four, five, six, seven, eight and nine, in block seven, for the sum of twenty-eight cents each; lots one and six, in block eight, for the sum of thirty cents each; lots two, three, four and five, in block eight, for the sum of twenty-eight cents each; lots one and four, in block nine, for the sum of thirty cents each, and lots two and three, in block nine, for the sum of twenty-eight cents each. The above described lots, pieces or parcels of land, situate, lying and being in the town of Mechanicsville, County of Milwaukie, and Territory of Wisconsin, and in the aggregate sold for the sum of seventeen dollars and twenty-four cents, being the amount of the county tax and charges due said county on the same for the year aforesaid, and did issue certificates of the sale thereof to the said purchaser. And whereas, the time allowed by law for the redemption of said premises expired on the fifteenth day of December, one thousand eight hundred and forty-two. And whereas, it appears by records in this office, that the undivided one-half of lots one, two, three, four, five, six, seven, eight, nine and ten, in block three, have been redeemed from the sale of said taxes, and that the remaining undivided one-half of said lots one, two, three, four, five, six, seven, eight, nine and ten, in block three, and all of the other above described tracts, lots or parcels of land, have not been

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redeemed within the time limited therefor by law, and in consequence thereof, the said purchaser or his assigns have become entitled to a deed for the same from the proper officers. And whereas, it appears that James H. Rogers is the lawful assignee and owner of said certificate.

Now, therefore, know all men by these presents, that in the name of the Territory of Wisconsin, I, Robert L. Ream, Clerk of the Board of Supervisors of the county aforesaid, by virtue of the authority in me vested by an act entitled, "An act to provide for the government of the several towns in this Territory, and for the revision of county government," approved February 18th, 1841, and in consideration of the premises, do grant, bargain, sell and confirm, unto the said James H. Rogers, his heirs and assigns forever, all and singular, the whole of the above described lots, pieces or parcels of land, except the undivided one-half of lots one, two, three, four, five, six, seven, eight, nine and ten, in block three, together with all and singular, the privileges and appurtenances thereunto belonging, to have and to hold the same, with the privileges and appurtenances, to the said James H. Rogers, his heirs and assigns forever.

In testimony whereof I, Robert L. Ream, the said clerk, have hereunto set my hand and affixed the Supervisors' seal, at Milwaukie, Wisconsin Territory, the seventeenth day of February, in the year of our Lord one thousand eight hundred and forty-six.

ROBERT L. REAM, [SEAL.]
Clerk of the Board of Supervisors.

In presence of
CHESTER D. MARTIN,
CHAS. A. TUTTLE.

TERRITORY OF WISCONSIN, Milwaukie County. } *ss.*

On this twenty-first day of December, A. D., 1846, came before me the above named Robert L. Ream, clerk aforesaid, and acknowledged that he executed the above deed for the uses and purposes therein mentioned.

Recorded December 21st, A. D., 1846, at 4 o'clock, P. M.

CHARLES A. TUTTLE,
Justice of the Peace.

STATE OF WISCONSIN, Milwaukie County. } *ss.*

Register's Office.

I hereby certify that the foregoing is a true and correct transcript from the records of my office, of the foregoing instrument, recorded in volume "S" of Deeds, on pages 554 and 555, and

has been by me carefully compared with said records, and that it is the whole thereof.

In testimony whereof I have hereunto set my hand this tenth day of September, A. D., 1859. SAMUEL WAEGLI,
Register of Milwaukie County, Wis.

By FRED. SCHLOEMILCH,
Deputy.

Exhibit "F."

Wisconsin Territory to James H. Rogers.

Tax-Deed.

TERRITORY OF WISCONSIN,
County of Milwaukie. }

To all whom these presents shall come, *greeting:*

Whereas, the Collector of the county of Milwaukie, in the territory of Wisconsin, did, on the ninth day of December, in the year one thousand eight hundred and thirty-nine, in pursuance of law, sell to James H. Rogers, all and singular, the town lots, pieces or parcels of land situate in the town and county of Milwaukie, and territory of Wisconsin, and known and described as follows, to wit: Lots one and two, in block one; lots one, two, three and four, in block two; lots one, two, three, four and five, in block three; lots one, two, three, four, five, six, seven, eight, nine and ten, in block four; lots one, two, three, four, five, six, seven, eight, nine and ten, in block five; lots one, two, three, four, five, six, seven, eight, nine and ten, in block six; lots two, three, five, six, seven, eight, nine and ten, in block seven; lots one, four, five, seven, eight, nine and ten, in block eight; lots one, two, three, four, five, six, seven and eight, in block nine; lots one, two, three, four, five, six, seven, eight, nine and ten, in block ten; lots one, two, three, four, five, six, seven, eight, nine and ten, in block eleven; lots one, two, three, four, five, six, seven, eight, nine and ten, in block twelve; lots one, two, three, four, five, six, seven, eight, nine and ten, in block thirteen; lots one, two, three, four, five, six, seven, eight, nine and ten, in block fourteen; lots one, two, three, four, five, six, seven, eight, nine and ten, in block fifteen; lots one, two, three, four, five, six, seven, eight, nine and ten, in block sixteen; lots one, two, three, four, five, six, seven, eight, nine and ten, in block seventeen; lots one, two, three, four, five, six, seven, eight, nine and ten, in block eighteen; lots one, two, three, four, five, six and seven, in block nineteen; lots one, two, three, four, five, six, seven and eight, in block twenty; lots one, two, three, four, five, six, seven, eight, nine

and ten, in block twenty-one; lots one, two, three, four, five, six, seven, eight, nine and ten, in block twenty-two (22); lots one, two, three, four, five, six, seven, eight, nine and ten, in block twenty-three; lots one, two, three, four, five, six, seven, eight, nine and ten, in block twenty-four; lots one, two, three, four, five, six, seven, eight, nine and ten, in block twenty-five; lots one, two, three, four, five, six, seven, eight, nine and ten, in block twenty-six; lots one, two, three, four, five, six, seven, eight, nine and ten, in block twenty-seven; lots one, two, three, four, five, six, seven, eight, nine and ten, in block twenty-eight; lots one, two, three, four, five, six, seven, eight, nine and ten, in block twenty-nine; lots one, two, three, four, five, six, seven, eight and nine, in block thirty-one; lots one, two, three, four and five, in block thirty; lots one, two, three, four, five, six, seven, eight, nine and ten, in block thirty-two; lots one, two, three, four, five, six, seven, eight, nine and ten, in block thirty-three; lots one, two, three, four, five, six, seven, eight, nine and ten, in block thirty-four; lots one, two, three, four, five, six, seven, eight, nine and ten, in block thirty-five; and lots one, two, three, four, five, six, seven, eight, nine and ten, in block thirty-six—all in Mechanicsville, west side of the river; also, the following described lots situate in the town and county aforesaid, in Mechanicsville, east side of the river, to wit: lots one, two and ten, in block one; lots two, five, six, seven and eight, in block two; lots one, two, three, four, five, six, seven, eight, nine and ten, in block three; lots one, two, three and four, in block four; lots one, two, three, four, five and six, in block five; lots one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve, in block six; lots one, two, three, four, five, six, seven, eight, nine and ten, in block seven; lots one, two, three, four, five and six, in block eight, and lots one, two, three and four, in block nine. The amount for which all of the aforesaid lots were sold, viz: one hundred and seven dollars and fifty-three cents; being the amount of the county tax and charges due said county on the same year aforesaid. And whereas, said collection did issue certificates of sale thereof to the said purchaser. And whereas, the time allowed by law for the redemption of said premises expired on the ninth day of December, one thousand eight hundred and forty-one. And whereas, it appears by records in the Office of the Clerk of the Board of Supervisors of said county, that the undivided one-half of each and every of the following lots, to wit: lots one, two, three, four, five, six, seven, eight, nine and ten, in block three, on the east side of the river, have been redeemed from said sale, and that the remaining one undivided one-half of each and every of said lots in block three, on the east side of the river, and all and singular, the

whole of each and every of the other foregoing described lots, pieces, or parcels of land have not been redeemed within the time limited therefor by law, and in consequence thereof, the said purchaser or his assigns has become entitled to a deed for the same from the proper officer. And whereas, it appears, that James H. Rogers is the lawful owner of said certificates. Now, therefore, know all men by these presents, that, in the name of the territory of Wisconsin, I, Burr S. Craft, Clerk of the Board of Supervisors of the county aforesaid, by virtue of the authority in me vested by an act entitled, "An Act to provide for the government of the several towns in this Territory, and for the revision of county governments, approved February 18th, 1841," and in consideration of the premises, do grant, bargain, sell, and confirm unto the said James H. Rogers, his heirs and assigns, forever, all and singular, the foregoing described lots, except the undivided one-half of each of the lots in block three, on the east side of the river, described above as having been redeemed, together with all and singular, the privileges and appurtenances thereunto belonging, to have and to hold the same, with the privileges, to the said James H. Rogers, his heirs and assigns forever.

In testimony whereof I, Burr S. Craft, the said Clerk, have hereunto set my hand and affixed the seal of the Board of Supervisors of said county, at Milwaukie, this twenty-eighth day of October, A. D., 1845.

BURR S. CRAFT, [SEAL.]
Clerk of the Board of Supervisors.

In presence of
ROBERT L. REAM,
PAUL JUNEAU.

WISCONSIN TERRITORY, }
Milwaukie County. } *ss.* On this twenty-eighth day of October, A. D., 1845, came before me Burr S. Craft, Clerk aforesaid, and acknowledged that he executed the above deed for the uses and purposes therein mentioned.

PAUL JUNEAU,
Notary Public.

Recorded December 23, A. D., 1845, at 1 o'clock, P. M.

STATE OF WISCONSIN, }
Milwaukie County. } *ss.*

Register's Office.

I hereby certify that the foregoing is a true and correct transcript from the records in my office, of the foregoing instrument, recorded in volume "2" of deeds on pages 196, 197 and 198, and

has been by me carefully compared with said records, and that it is the whole thereof.

In testimony whereof, I have hereunto set my hand this tenth day of September, A. D., 1859.

SAMUEL WAEGLI,
Register, Milwaukie County, Wisconsin.

By FRED. SCHLOEMILCH,
Deputy.

Exhibit "K."

James H. Rogers and wife to Zelotas A. and Sanford D. Colton, Deed:

This indenture, made the twenty-second day of June, in the year of our Lord one thousand eight hundred and forty-seven, between James H. Rogers and Emily, his wife, of the city and county of Milwaukie, Wisconsin Territory, parties of the first part, and Zelotas A. Colton and Sanford D. Colton, of the same place, parties of the second part, Witnesseth, that the said parties of the first part, for and in consideration of the sum of four thousand dollars to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have given, granted, bargained, sold, remised, released, aliened and confirmed, and by these presents do give, grant, bargain, sell, remise, release, alien and confirm, unto the said party of the second part, to their heirs and assigns forever, the following described real estate, to wit: twenty-two acres of land more or less, undivided in fractional lot number two of section four in township seven, range twenty-two, together with one-half of the water power belonging to said fractional lot two, and also all the right, title and interest of the said parties of the first part in and to said lot two; also lot four of said section four, together with the entire water power thereto belonging; also, one-half undivided of the following tracts of land, viz: lot five and the west half of the north-west quarter of the south-east quarter of the north-west quarter of section nine in said town seven north of range twenty-two east, together with one-half of the water power belonging to said lot five, with the privilege of flowing the water back into fractional lot three in said section four sufficiently to raise a dam nine feet high at or near the old saw-mill, together with all and singular, the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, claim or demand whatsoever of the said parties of the first part, either in law or equity, either in possession or expectancy of, in and to the above bargained premises and their hereditaments and appurtenances, to have and to hold the said

premises as above described, with the hereditaments and appurtenances, unto the said parties of the second part, and to their heirs and assigns forever, and the said parties of the first part, for themselves, their heirs, executors and administrators, do covenant, grant, bargain and agree to and with the said parties of the second part, their heirs and assigns, that at the time of the ensealing and delivering of these presents, they are well seized of the premises above described, as of a good, sure, perfect, absolute and indefeasible estate of inheritance in the law in the fee simple, and that the same are free and clear from all incumbrances whatever, and that the above bargained premises in the quiet and peaceable possession of the said parties of the second part, their heirs and assigns, against all and every person or persons lawfully claiming the whole or any part thereof, they will forever warrant and defend.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

JAS. H. ROGERS, [SEAL.]
EMILY ROGERS, [SEAL.]

Signed, sealed and delivered
in presence of
MARIA GOLMAN,
JOEL W. HEMENWAY.

Territory of Wisconsin, } *ss.*
Milwaukie County. }

Be it remembered, that on the twenty-second day of June, A. D., 1847, personally came before me the above named James H. Rogers and Emily, his wife, to me known to be the person who executed the said deed, and acknowledged the same to be their free act and deed for the uses and purposes therein mentioned.

J. W. HEMENWAY, [SEAL.]
Notary Public.

Recorded February 9th, A. D., 1848, at 5 o'clock, P. M.

STATE OF WISCONSIN, }
Milwaukie County. }

Register's Office.

I hereby certify that the foregoing is a true and correct transcript from the records in my office, of the foregoing instrument recorded in volume twenty-three of Deeds, on page 338, and has been by me carefully compared with said records, and that it is the whole thereof.

In testimony whereof, I have hereunto set my hand this fifth day of September, A. D., 1859.

SAMUEL WAEGLI,
Register Mil. Co., Wis.

By FRED. SCHLOEMILCH,
Deputy.

Exhibit "G."

WISCONSIN TERRITORY,
Milwaukie County. }

To all to whom these presents shall come, *greeting:*

Whereas, the Collector of the county of Milwaukie, in the Territory of Wisconsin, did, on the fourteenth day of December, in the year one thousand eight hundred and forty, in pursuance of law, sell to John Corbin, all and singular, those certain town lots—pieces of land situate in Mechanicsville, western addition, in the town of Milwaukie, county of Milwaukie, and Territory of Wisconsin, and known and described as follows, to wit: Lots one and two, in block one; lots one, two, three, and four, in block two; lots one, two, three, four and five, in block three; lots one, two, three, four, five, six, seven, eight, nine and ten, in block four; lots one, two, three, four, five, six, seven, eight, nine and ten, in block five; lots one, two, three, four, five, six, seven, eight, nine and ten, in block six; lots one, two, three, four, five, six, seven, eight, nine and ten, in block seven; lots one, two, three, four, five, six, seven, eight, nine and ten, in block eight; lots one, two, three, four, five, six, seven and eight, in block nine; lots one, two, three, four, five, six, seven, eight, nine and ten, in block ten; lots one, two, three, four, five, six, seven, eight, nine and ten, in block eleven; lots one, two, three, four, five, six, seven, eight, nine and ten, in block twelve; lots one, two, three, four, five, six, seven, eight, nine and ten, in block thirteen; lots one, two, three, four, five, six, seven, eight, nine and ten, in block fourteen; lots one, two, three, four, five, six, seven, eight, nine and ten, in block fifteen; lots one, two, three, four, five, six, seven, eight, nine and ten, in block sixteen; lots one, two, three, four, five, six, seven, eight, nine and ten, in block seventeen; lots one, two, three, four, five, six, seven, eight, nine and ten, in block eighteen; lots one, two, three, four, five, six, and seven, in block nineteen; lots one, two, three, four, five, six, seven and eight, in block twenty; lots one, two, three, four, five, six, seven, eight, nine and ten, in block twenty-one; lots one, two, three, four, five, six, seven, eight, nine and ten, in block twenty-two; lots one, two, three, four, five, six, seven, eight, nine and ten, in block twenty-three; lots one, two, three, four, five, six, seven, eight, nine and ten, in block twenty-four; lots one, two, three, four, five, six, seven, eight, nine and ten, in block twenty-five; lots one, two, three, four, five, six, seven, eight, nine and ten, in block twenty-six (26); lots one, two, three, four, five, six, seven, eight, nine and ten, in block twenty-seven; lots one,

two, three, four, five, six, seven, eight, nine and ten, in block twenty-eight; lots one, two, three, four, five, six, seven, eight, nine and ten, in block twenty-nine; lots one, two, three, four and five, in block thirty; lots one, two, three, four, five, six, seven, eight and nine, in block thirty-one; lots one, two, three, four, five, six, seven, eight, nine and ten, in block thirty-two; lots one, two, three, four, five, six, seven, eight, nine and ten, in block thirty-three; lots one, two, three, four, five, six, seven, eight, nine and ten, in block thirty-four; lots one, two, three, four, five, six, seven, eight, nine and ten, in block thirty-five; and lots one, two, three, four, five, six, seven, eight, nine and ten, in block thirty-six; and did receive in payment therefor, in all, the sum of ninety-three dollars and forty-seven cents, being the amount of county tax and charges due said county on the same, for the year aforesaid, and did issue certificates of the sale thereof to said purchasers. And whereas, the time allowed by law for the redemption of said premises, expired on the fourteenth day of December, in the year one thousand eight hundred and forty-two. And whereas, as it appears by records in the office of the Clerk of the Board of Supervisors of said county, that all and singular, the foregoing described town lots, pieces or parcels of land, have not been redeemed within the time limited therefor by law, and in consequence thereof the said purchaser, or his assigns, has become entitled to a deed for the same from the proper officer. And whereas, it appears that James H. Rogers is the lawful assignee and owner of said certificate.

Now, therefore, know all men by these presents, that in the name of the Territory of Wisconsin, I, Burr S. Craft, Clerk of the Board of Supervisors of the county aforesaid, by virtne of the authority in me vested by an act entitled, "An act to provide for the government of the several towns in this Territory, and for the revision of county government," approved February 18th, 1841, and in consideration of the premises do grant, bargain, sell and confirm unto the said James H. Rogers, his heirs and assigns forever, all and singular, the whole of the foregoing described lots, pieces or parcels of land; together with all and singular, the privileges and appurtenances thereunto belonging; to have and to hold the same, with the privileges and appurtenances, to the said Jas. H. Rogers, his heirs and assigns forever.

In testimony whereof I, Burr S. Craft, the said Clerk, have hereunto set my hand and affixed the seal of the Board of Supervisors of said county, at Milwaukie, in said Territory, this twenty-eighth day of October, in the year one thousand eight hundred and forty-five. BURR S. CRAFT, [SEAL.]

Clerk of the Board of Supervisors.

In presence of

ROBERT L. REAM,

PAUL JUNEAU.

WISCONSIN TERRITORY, Milwaukie County. } *ss.*

On this twenty-eighth day of October, A. D., 1845, came before me Burr S. Craft, Clerk aforesaid, and acknowledged that he executed the above deed for the uses and purposes therein mentioned.

PAUL JUNEAU,
Notary Public.

Recorded December 23, A. D., 1845, at 1 o'clock, P. M.

Exhibit "H."

TERRITORY OF WISCONSIN, County of Milwaukie. }

To all to whom these presents come, *greeting:*

Whereas, the Collector of the County of Milwaukie, in the Territory of Wisconsin, did, on the ninth day of December, in the year one thousand eight hundred and thirty-nine, in pursuance of law, sell to James H. Rogers all and, singular, the town lots, pieces or parcels of land situate in the town and county of Milwaukie and Territory of Wisconsin, and known and described as follows, to wit: Lots one and two, in block one; lots one, two, three and four, in block two; lots one, two, three, four and five, in block three; lots one, two, three, four, five, six, seven, eight, nine and ten, in block four; lots one, two, three, four, five, six, seven, eight, nine and ten, in block five; lots one, two, three, four, five, six, seven, eight, nine and ten, in block six; lots two, three, five, six, seven, eight, nine and ten, in block seven; lots one, four, five, seven, eight, nine and ten, in block eight; lots one, two, three, four, five, six, seven and eight, in block nine; lots one, two, three, four, five, six, seven, eight, nine and ten, in block ten; lots one, two, three, four, five, six, seven, eight, nine and ten, in block eleven; lots one, two, three, four, five, six, seven, eight, nine and ten, in block twelve; blocks one, two, three, four, five, six, seven, eight, nine and ten, in block thirteen; lots one, two, three, four, five, six, seven, eight, nine and ten, in block fourteen; lots one, two, three, four, five, six, seven, eight, nine and ten, in block fifteen; lots one, two, three, four, five, six, seven, eight, nine and ten, in block sixteen; lots one, two, three, four, five, six, seven, eight, nine and ten, in block seventeen; lots one, two, three, four, five, six, seven, eight, nine and ten, in block eighteen; lots one, two, three, four, five, six and seven, in block nineteen; lots one, two, three, four, five, six, seven and eight, in block twenty; lots one, two, three, four, five, six, seven, eight, nine and ten, in block twenty-one; lots one, two, three, four, five, six, seven, eight, nine and ten, in block twenty-

two, (22); lots one, two, three, four, five, six, seven, eight, nine and ten, in block twenty-three; lots one, two, three, four, five, six, seven, eight, nine and ten, in block twenty-four; lots one, two, three, four, five, six, seven, eight, nine and ten, in block twenty-five; lots one, two, three, four, five, six, seven, eight, nine and ten, in block twenty-six; lots one, two, three, four, five, six, seven, eight, nine and ten, in block twenty-seven; lots one, two, three, four, five, six, seven, eight, nine and ten, in block twenty-eight; lots one, two, three, four, five, six, seven, eight, nine and ten, in block twenty-nine; lots one, two, three, four, five, six, seven, eight and nine, in block thirty-one; lots one, two, three, four and five, in block thirty; lots one, two, three, four, five, six, seven, eight, nine and ten, in block thirty-two; lots one, two, three, four, five, six, seven, eight, nine and ten, in block thirty-three; lots one, two, three, four, five, six, seven, eight, nine and ten, in block thirty-four; lots one, two, three four, five, six, seven, eight, nine and ten, in block thirty-five; and lots one, two, three, four, five, six, seven, eight, nine and ten, in block thirty-six, all in Mechanicsville, west side of the river. Also, the following described lots situate in the town and county aforesaid, and in Mechanicsville, east side of the river, to wit: Lots one, two and ten, in block one; lots two, five, six, seven and eight, in block two; lots one, two, three, four, five, six, seven, eight, nine and ten, in block three; lots one, two, three and four, in block four; lots one, two, three, four, five and six, in block five; lots one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve, in block six; lots one, two, three, four, five, six, seven, eight, nine and ten, in block seven; lots one, two, three, four, five and six, in block eight; and lots one, two, three, and four, in block nine. The amount for which all of the aforesaid lots were sold, to wit: One hundred and seven dollars and fifty-three cents, being the amount of the county tax and charges due said county on the same for the year aforesaid; and whereas, said Collector did issue certificates of the sale thereof to the said purchaser; and whereas, the time allowed by law for the redemption of said premises expired on the ninth day of December, one thousand eight hundred and forty-one; and whereas, it appears by records in the office of the clerk of the Board of Supervisors of said county, that the undivided one-half of each and every of the following lots, to wit: Lots one, two, three, four, five, six, seven, eight, nine and ten, in block three, on the east side of the river, have been redeemed from said sale, and that the remaining one undivided one-half of each and every of said lots in block three, on the east side of the river, and all and singular, the whole of each and every of the foregoing described lots, pieces or parcels of land, have not been redeemed within the time limited therefor

by law, and in consequence thereof, the said purchaser, or his assigns, has become entitled to a deed for the same from the proper officer; and whereas, it appears that James H. Rogers is the lawful owner of said certificate. Now, therefore, know all men by these presents, that in the name of the Territory of Wisconsin, I, Burr S. Craft, clerk of the Board of Supervisors of the county aforesaid, by virtue of the authority in me vested by an act entitled, "An act to provide for the government of the several towns in this Territory, and for the revision of county government," approved February 18th, 1841. And in consideration of the premises, do grant, bargain, sell and confirm unto the said James H. Rogers, his heirs and assigns forever, all and singular, the foregoing described lots except the undivided one-half of each of the lots in block three on the east side of the river, described above as having been redeemed, together with all and singular, the privileges and appurtenances thereunto belonging, to have and to hold the same with the privileges to the said James H. Rogers, his heirs and assigns forever.

In testimony whereof I, Burr S. Craft, the said Clerk, have hereunto set my hand and affixed the seal of the Board of Supervisors of the said county, at Milwaukie, this twenty-eighth day of October, A. D., 1845.

BURR S. CRAFT, [SEAL.]
Clerk of the Board of Supervisors.

In presence of
ROBERT L. REAM,
PAUL JUNEAU.

WISCONSIN TERRITORY, }
Milwaukie County. } *ss.*

On this twenty-eighth day of October, A. D., 1845, came before me, Burr S. Craft, Clerk aforesaid, and acknowledged that he executed the above deed for the uses and purposes therein mentioned.

PAUL JUNEAU,
Notary Public.

Recorded December 23, A. D., 1845, at 1 o'clock, P. M.

Exhibit "I."

TERRITORY OF WISCONSIN, }
County of Milwaukie. } *ss.*

To all to whom these presents come, greeting: Whereas, the town taxes for the year one thousand eight hundred and forty-four, charged upon the following described pieces or parcels of land, were raised by a vote of a legal town meeting in the town in which said lands are situated, and assessed by assessors duly

chosen and qualified, and in pursuance of law. And whereas, the county taxes assessed upon said lands for said year were duly ordered and authorized to be so assessed by the Board of County Supervisors of said county, and were assessed in pursuance of law. And whereas, the assessment roll of said town was completed, and a transcript thereof committed to the Collector of said town for the collection of the taxes therein charged and by him duly returned, all in pursuance of the law. And whereas, said pieces or parcels of land were returned to the Treasurer of said county as delinquent for the following taxes, to wit: town and county taxes, and said delinquent taxes, assessed and charged thereon, unpaid, said return being made in pursuance of law. And whereas, the said Treasurer did thereupon give the requisite notice of the time and place of the sale of said lands for said delinquent taxes, and did, on the tenth day of April, in the year one thousand eight hundred and forty-five, the day of the date specified in said notice, sell, pursuant to law, to James H. Rogers the following described lots or tracts of land in Mechanicsville, of the town of Milwaukie, in said county, to wit: lots one, two, three, four, five and six, (1, 2, 3, 4, 5 and 6,) in block number eight, (8); lots one, two and ten, (1, 2 and 10,) in block number one, (1); lots one, two, three, four, five, six, seven, eight, nine and ten, (1, 2, 3, 4, 5, 6, 7, 8, 9 and 10,) in block number seven, (7); lots one, two, three, four, five, six, seven, eight, nine, ten, eleven and twelve, (1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12,) in block No. six (6); lots one, two, three and four, (1, 2, 3 and 4,) in block number nine (9); lots No. eleven and twelve, (11 and 12,) in block No. two, (2,) for the sum of sixteen cents each, and in the aggregate for the sum of five dollars and ninety-two cents, being the amount of said delinquent town and county taxes and charges for the year one thousand eight hundred and forty-four, and did issue certificates of sale thereof to the said purchaser. And whereas, the time allotted by law for the redemption of said premises expired on the tenth day of April, one thousand eight hundred and forty-eight. And whereas, it appears by the records in this office, that said lots or tracts of land have not been redeemed according to law, and in consequence thereof the said purchaser or his assigns became entitled to a deed of conveyance for the same from the proper officer. And whereas, it appears that James H. Rogers is the lawful assignee and owner of said certificates. Now, therefore, know all men by these presents, that in the name of the Territory of Wisconsin, I, Charles P. Ewerts, Clerk of the Board of Supervisors for the county aforesaid, by virtue of the authority in me vested by an act entitled, "An act to provide for the government of the several towns in this Territory, and for the revision of county government," approved February 18th, A. D., 1841,

and in consideration of the premises, do by these presents, grant, bargain, sell, convey and confirm unto the said James H. Rogers, his heirs and assigns forever, all the above described lots or tracts of land, together with all and singular, the privileges and appurtenances thereunto belonging, to have and to hold the same, with the privileges and appurtenances, to the said James H. Rogers, his heirs and assigns forever.

In testimony whereof I, Charles P. Ewerts, the said Clerk, have hereunto set my hand and affixed the Supervisors' [SEAL.] seal, at Milwaukie, in the Territory of Wisconsin, this twelfth day of April, in the year of our Lord one thousand eight hundred and forty-eight.

CHARLES P. EWERTS,
Clerk of the Board of Supervisors.

In presence of
WALTER S. EWERTS,
C. WALWORTH.

TERRITORY OF WISCONSIN, } *ss.*
County of Milwaukie. }

On this thirtieth day of April, A. D., 1848, came before me the above named Charles P. Ewerts, Clerk aforesaid, and acknowledged that he executed the above deed for the uses and purposes therein mentioned. CLINTON WALWORTH,
Justice of the Peace.

Recorded April 13th, A. D., 1848, at 9 o'clock, A. M.

Exhibit "J."

TERRITORY OF WISCONSIN, }
Milwaukie County. }

To all to whom these presents shall come, greeting:

Whereas, the Collector of the county of Milwaukie, in the Territory of Wisconsin, did, on the fourteenth day of December, in the year of our Lord one thousand eight hundred and forty, in pursuance of law, sell to John Corbin, lots one and ten, in block one, for the sum of thirty cents each; lot two, in block one, for the sum of twenty-eight cents; lots one, two, three, four, five, six, seven, eight, nine and ten, in block three, for the sum of thirty cents each; lots two, five, six, seven and eight, in block two, for the sum of twenty-eight cents each; lots one, two, three and four in block four, for the sum of twenty-eight cents each; lots one and six, in block five, for the sum of thirty cents each; lots two, three, four and five, in block five, for the sum of twenty-eight cents each; lots one and twelve, in block six, for the sum of thirty

cents each; lots two, three, four, five, six, seven, eight, nine, ten and eleven, in block six, for the sum of twenty-eight cents each; lots one and ten, in block seven, for the sum of thirty cents each; lots two, three, four, five, six, seven, eight and nine, in block seven, for the sum of twenty-eight cents each; lots one and six, in block eight, for the sum of thirty cents each; lots two, three four and five, in block eight, for the sum of twenty-eight cents each; lots one and four in block nine, for the sum of thirty cents each, and lots two and three, in block nine, for the sum of twenty-eight cents each.

The above described lots, pieces or parcels of land, situate, lying and being in the town of Mechanicsville, county of Milwaukie, and Territory of Wisconsin, and in the aggregate sold for the sum of seventeen dollars and twenty-four cents, being the amount of the county tax and charges due said county on the same for the year aforesaid, and did issue certificates of the sale thereof to the said purchaser. And whereas, the time allowed by law for the redemption of said premises expired on the fifteenth day of December, one thousand eight hundred and forty-two. And whereas, it appears by records in this office, that the undivided one-half of lots one, two, three, four, five, six, seven, eight, nine and ten, in block three, have been redeemed from the sale of said taxes, and that the remaining undivided one-half of said lots one, two, three, four, five, six, seven, eight, nine and ten, in block three, and all of the other above described tracts, lots or parcels of land, have not been redeemed within the time limited therefor by law, and in consequence thereof, the said purchaser or his assigns have become entitled to a deed for the same from the proper officer. And whereas, it appears that James H. Rogers is the lawful assignee and owner of said certificate.

Now, therefore, know all men by these presents, that in the name of the Territory of Wisconsin, I, Robert L. Ream, Clerk of the Board of Supervisors of the county aforesaid, by virtue of the authority in me vested by an act entitled, "An Act to provide for the government of the several towns in this territory, and for the revision of county government," approved February 18th, 1841, and in consideration of the premises, do grant, bargain, sell and confirm unto the said James H. Rogers, his heirs and assigns forever, all and singular, the whole of the above described lots, pieces or parcels of land, except the undivided one-half of lots one, two, three, four, five, six, seven, eight, nine and ten, in block three, together with all and singular, the privileges and appurtenances thereunto belonging, to have and to hold the same, with the privileges and appurtenances, to the said James H. Rogers, his heirs and assigns forever.

In testimony whereof I, Robert L. Ream, the said Clerk, have hereunto set my hand and affixed the Supervisors' seal, at Milwaukie, Wisconsin Territory, this seventeenth day of February, in the year of our Lord one thousand eight hundred and forty-six.

ROBERT L. REAM, [SEAL.]
Clerk of the Board of Supervisors.

In presence of
CHESTER D. MARTIN,
CHAS. A. TUTTLE.

TERRITORY OF WISCONSIN, Milwaukie County. } *ss.*

On this twenty-first day of December, A. D., 1846, came before me the above named Robert L. Ream, Clerk aforesaid, and acknowledged that he executed the above deed for the uses and purposes therein mentioned.

CHARLES A. TUTTLE,
Justice of the Peace.

Recorded December 1st, A. D., 1846, at 4 o'clock, P. M.

Deposition of Zelotas A. Colton and John J. Orton, taken September 13th, 1859, pursuant to the stipulation in this cause, at the office of Jno. A. Savage, Jr., U. S. Commissioner, at which time and place appeared the complainant by Thomas L. Ogden, Esq., his solicitor, and the defendant, Noonan, by Jason Downer, Esq., his solicitor, and the said deponents, being first duly sworn, were examined on the verbal interrogatories of the several solicitors, and their answers reduced to writing by me, and read over to and subscribed by said deponents severally.

JNO. A. SAVAGE,
U. S. Commissioner.

John J. Orton, being duly sworn on oath, desposed and said:

I know the complainant and defendant, Noonan. I am the grantee in a tax deed recorded in the office of the Register of Deeds, Milwaukie county, Wisconsin, in Vol. 47 of deeds, pages 115, 116.

I don't know that I know Mechanicsville. I know of it. The tract of land described by metes and bounds in the tax deed referred to, embraces:

All of lot two, section four, which is covered by the plat of Mechanicsville, if any part of the said section is covered by such plat—that is to say, the land in fact, although described in general terms as part of south-east quarter of section four, yet that embraced in the particular boundaries is part of lot two, section four, town 7, range 22.

I am in possession of the land described in the mortgage referred to in the bill of complaint, and claim to hold the same as owner. I came into possession of it November 1st, 1852, under deeds, of which copies are shown me, marked "A" and "B," and held possesion of it under those deeds, and the tax title deeds above referred to, (which papers marked "A" and "B," are hereto annexed as exhibits.) I have held possession of the land to the present time. When I came into possession there were several buildings on lot two. I should think there was fifteen acres enclosed on lot two. There was a fence or part of a fence on the land described in the mortgage mentioned in the bill of complaint. A portion of this land was occupied by us as a mill-yard, and the mill was in my possession. A portion of the land mentioned in said mortgage was covered with grass. One part of the mortgaged premises was an old house, which had been enclosed, and part of the enclosure had been destroyed. The house was on or near the north-west part of block four in the pretended plat of Mechanicsville. I occupy a portion of the land now with saw-logs and timber. I have occupied the land since November, 1852. The south-east quarter of the aforesaid section four does not come to the Milwaukie river. No other person has had possession of the land referred to since I came into possession in 1852, that I know of.

Cross-examined.

I do not know of such a village as Mechanicsville, in fact, though I have heard of it. I do not know where the plat of Mechanicsville is located, though I know where they claim it is located. I know the land described in the mortgage in the bill of complaint, from its boundaries. I know of it as it speaks of the Milwaukie river. I know that river, and I have seen a map or plat of what they called Mechanicsville. I know that the land described in my deed, covers the land described in the mortgage. I don't know that any of the land described in the mortgage, is in the south-east quarter of section four.

Question. Does any of the land described in the bill of complaint, and of which you have sworn you have been in possession of since November, 1852, lie in the south-east quarter of section four?

Answer. My answer to that is two-fold. None of the land I have occupied since 1852, lies in that quarter section. In regard to the location of Mechanicsville, I only know of it from what I have heard, and from the pretended plat of it, and if the metes and bounds described in it locate it, then it is on the Milwaukie river, in fractional lot two, and if the description on the map, locating the plat in the south-east $\frac{1}{4}$ of section 4 aforesaid is correct, then it is not on lot two.

Question. Read the description from the tax-deed of what you claim conveys land in fractional lot two.

Answer. The description is "that piece of land bounded north by Dempster," (plff. here objects to the answer as not responsive.) Witness continues, east by Jones & Bair, west by river, and south by Allerding nineteen acres.

This is the part of the description in the deed which I claim applies to lot two, but I claim all there is in the deed; the description I have read does not comprise any land in the S. E. ¼ of sec. 4.

I know the defendant, Josiah A. Noonan. He has no interest with me in this land of record—I don't know that he has any; we have had some conversation about a purchase, but nothing has been finished; we have had some conversation about this mortgage; I don't remember distinctly what that conversation has been. I always told Noonan that he had no title under Lee's conveyance to him, and have claimed the land myself.

I have never had any understanding with Noonan in reference to this lot Lee mortgaged or claims. I don't know that I have any interest in the result of this suit; I don't know that I will be benefited in any way by Noonan's success in this suit.

In 1855, Noonan and myself were not on very good terms; sometimes we have been friendly and sometimes not. I supposed that Noonan purchased this land to acquire a position that would affect him in some way in the controversy we then had about the water power.

That controversy has not been entirely settled. We have agreed upon a basis of settlement, which if carried out will close the whole matter.

There is no reference to this land in this basis of settlement that I know of.

In 1852 there was a portion of a fence and a house near the N. W. corner of block 4. There might have been an acre enclosed, the balance of it laid open. The land not enclosed was not cultivated.

J. J. ORTON.

Exhibit "A."

Zelotas A. Colton, et al., to John J. Orton.

Deed.

This indenture, made the first day of November, in the year of our Lord one thousand eight hundred and fifty-two, between Zelotas A. Colton, Erastus B. Wolcott, and Elizabeth J., his wife, of Milwaukie county, Wisconsin, Talbot C. Donsman, and Jane

Ann S., his wife, Sanford D. Colton, and Jane E., his wife, of the county of Waukesha, State aforesaid, parties of the first part, and John J. Orton, of Milwaukie county, and State aforesaid, of the second part, Witnesseth, that the said party of the first part, for and in consideration of the sum of forty-thousand dollars to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, have given, granted, bargained, sold, remised, released, aliened, conveyed, and confirmed, and by these presents do give, grant, bargain, sell, remise, alien, convey and confirm unto the said party of the second part, his heirs and assigns forever, the following described Real Estate, situated in the county of Milwaukie, and State of Wisconsin, in sections four and nine, in town seven, range twenty-two east; beginning on the north on the west bank of the Milwaukie river, where the west section line of said section four intersects said river, running thence south on said section line and on the west section line of said section nine to a point nineteen chains south from the north-west corner of said section nine, thence east on a near parallel with the north and south line of said section nine, about fifty-five chains to the Milwaukie river, thence north-westerly on said river to the place of beginning, except four acres out of the S. W. corner of lot 3 in said section four; also, as much of lot one in section nine as lies between the said river and a line drawn due south in extension of the quarter section line running north and south through said section for about one acre more or less; also the west part of the north nineteen and one-half acres in lot two, in said section four, beginning on the quarter line of said section four, where it intersects the east bank of said river, thence east on said line three chains, seventy-one links to a road, thence along said road south 23½° east, seven chains, thence south 16½° east, seven chains, twenty-five links to the south boundary of said 19½ acres, thence west three chains, twenty links to said river, thence along said river to the place of beginning, containing three acres more or less; also, the undivided fourth of twenty-six acres in lot two in said section four; also, twenty-two (22) acres undivided more or less in said lot two section four, being frl. lots three, four, and part of frl. lot two, in said section four, and part of frl. lots one and five, and the north-west quarter of the north-west quarter of section nine aforesaid, containing one hundred seventy-six 30-100 acres on the west side of said river, and twenty-nine 50-100 acres on the east side of said river; also, all the water-power, dam, mills, distillery, races, buildings, fixtures, and improvements of every nature, situated on and connected with the foregoing lands, and all the interest of the parties of the first part, of, in, and to the lands and water-power in said section four and nine, more or less, ex-

cept such lots in the village of Humboldt, as are heretofore deeded by the parties of the first part, together with all and singular, the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and all the estate, right, title, interest, claim or demand whatever of the said parties of the first part, either in law or equity, either in possession or expectancy of, in, and to the above bargained premises, and their hereditaments and appurtenances, to have and to hold the said premises as above described, with the hereditaments and appurtenances unto the said party of the second part, and to his heirs, and assigns forever, and the said parties of the first part, for themselves, their heirs, executors and administrators, do covenant, grant, bargain, and agree to, and with the said party of the second part, his heirs and assigns, that, at the time of the ensealing and delivery of these presents they were well seized of the premises above described, as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in the law in fee simple, and that the same are free, clear from all incumbrances whatever, and that the above bargained premises, in the quiet and peaceable enjoyment of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming the whole or any part thereof, they will forever warrant and defend. In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written. Interlineations and erasures made before the execution.

Z. A. COLTON, [SEAL.]
S. D. COLTON, [SEAL.]
E. B. WOLCOTT, [SEAL.]
E. J. WOLCOTT, [SEAL.]
J. E. COLTON, [SEAL.]
T. C. DONSMAN, [SEAL.]
J. A. S. DONSMAN, [SEAL.]

Sealed and delivered
in presence of
ALLEN DAWSON, E. MARINER,
GEORGE TOD, ANTON PETERS.

STATE OF WISCONSIN, }
County of Milwaukie. }

Be it remembered, that on the 11th day of November, 1852, personally came before me the above-named Zelotas A. Colton, Erastus B. Wolcott and Elizabeth J., his wife, and Talbot C. Donsman, to me known to be the person who executed the said deed, and acknowledged the same to be their free act and deed for the uses and purposes therein mentioned.

E. MARINER,
Notary Public, Milwaukie county, State of Wisconsin.

STATE OF WISCONSIN, }
County of Waukesha. }

Be it remembered, that on the 16th day of November, A. D., 1852, came before me the within named Jane Ann S. Donsman, Sanford D. Colton and J. C. Colton, to me known to be the persons who executed the within deed, and acknowledged the same to be their free act and deed for the purposes therein mentioned.

GEORGE TOD,
Justice of the Peace.

Recorded December 9th, A. D., 1852, at 2¼ o'clock, P. M.

STATE OF WISCONSIN, }
Milwaukie County. }

Register's Office.

I hereby certify that the foregoing is a true and correct transcript from the records in my office, of the foregoing instrument, recorded in volume thirty-seven of deeds, on pages 197, 198 and 199, and has been by me carefully compared with said records, and that it is the whole thereof.

In testimony whereof I have hereunto set my hand this fifth day of September, A. D., 1859.

SAMUEL WAEGLI,
Register, Milwaukie County, Wisconsin.

By FRED. SCHLOEMILCH,
Deputy.

Exhibit "B."

E. B. Wolcott and wife to T. C. Donsman and wife, Z. A. Colton and S. D. Colton and wife, to John J. Orton, deed:

This indenture, made this 19th day of October, A. D., 1853, between Erastus B. Wolcott and Elizabeth J., his wife, Zelotas A. Colton, Talbot C. Donsman and Jane Ann, his wife, Sanford D. Colton and Jane E., his wife, of the first part, and John J. Orton of the second part, Witnesseth, that the said parties of the first part, in consideration of the sum of twenty-five thousand dollars to them in hand paid, the receipt whereof is hereby acknowledged, have given, granted, bargained, released, sold and conveyed, and by these presents do give, grant, bargain, sell, release and convey unto the said party of the second part, his heirs and assigns forever, the following described real estate, situate in township No. seven (7,) north of range No. twenty-two east, to wit: one undivided eighth of twenty-six acres undivided in fractional lot No. two in section No. four, being the same premises formerly conveyed to Erastus B. Wolcott by Alexander W. Stow, by deed

recorded in volume twenty-four of deeds, page 452, in Milwaukie county; one undivided eighth of twenty-six acres undivided in said fractional lot No. two, being the same premises formerly conveyed to Talbot C. Donsman by Byron Kilbourn and wife by deed recorded in volume twenty-four of deeds, page 451, in Milwaukie county; twenty-two acres undivided in fractional lot No. two aforesaid, being the same premises formerly deeded to James Ludington by Sanford D. Colton and wife and Zelotas A. Colton and wife, by deed bearing date the ninth day of August, A. D., 1849; so much of the north eighteen and $\frac{89}{100}$ acres of said lot two, bounded as follows, to wit: beginning at the quarter section line running east and west in said section four, where it intersects the left bank of the Milwaukie river, running thence east three chains and seventy-one links to the north-west side of the road, thence along the west side of the road south twenty-three and one-half degrees east, seven chains and twenty-five links to the south boundary line of said eighteen and $\frac{89}{100}$ acres; thence west three chains and twenty-three links to the Milwaukie river; thence along the river to the place of beginning, containing three acres more or less. So much of lot No. one, in section nine, as lies between a line drawn due south, in continuation of the quarter section line running north and south through said section four and the Milwaukie river, containing one acre, more or less; lot three, in said section four, containing in all forty-six and 15-100 acres, except the following described lots, to wit: lot five, in block seventeen; lots one, two and three, in block No. sixteen; lot one, in block five; lots one, two, three and four, in block six; lots one and four, in block seven; lots one, two, three, four and six, in block eight; lots one and two, in block one; and lot four, in block two, as represented on the plat of the addition of Mechanicsville, and excepting, also, four acres out of the south-west corner of said tract heretofore conveyed by Frederick William Allerding to F. Schlafer; lot four of said section four; all that certain piece of land, bounded as follows, to wit: commencing at the north-west corner of said section No. nine, running thence south along said section line nineteen chains; thence east on a mean parallel with the north and south boundary lines of said quarter section fifty-five chains, to the Milwaukie river; thence north-westerly along the said river to the north line of said section; thence west along said boundary line to the place of beginning, containing eighty-one acres and ninety-five hundredths, be the same more or less, together with a water-power, mills and buildings appurtenant to the premises herein before conveyed, and to each and every part thereof. The dam across the Milwaukie river at or near the village of Humboldt, and all the rights, franchises, privileges or immunities of or concerning the same, belonging to the

said parties of the first part, and all the right, title and interest of the said parties of the first part, in and to said sections four and nine, (reserving from the premises herein conveyed, all the lots in the village of Humboldt, heretofore conveyed by the parties of the first part,) together with all and singular, the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and all the estate, right, title, interest, claim or demand whatsoever of the said parties of the first part, either in law or equity, in possession or expectancy of, in and to the above bargained premises and their hereditaments and appurtenances; to have and to hold the said premises above described, with the hereditaments and appurtenances unto the said party of the second part, his heirs and assigns forever.

And the said parties of the first part, for themselves, their heirs, executors, administrators, do covenant, bargain and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents, they are well seized of the premises above described, as of a good, sure, perfect and indefeasible estate of inheritance in the law, in fee simple, and that the same are free and clear from all incumbrances whatever, and that the above bargained premises, in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming the same or the whole or any part thereof, they will forever warrant and defend.

In testimony whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

E. B. WOLCOTT, [SEAL.]
E. J. WOLCOTT, [SEAL.]
T. C. DONSMAN, [SEAL.]
J. A. S. DONSMAN, [SEAL.]
Z. A. COLTON, [SEAL.]
SANFORD D. COLTON, [SEAL.]
JANE E. COLTON, [SEAL.]

Signed, sealed and delivered in the presence of

CHARLES C. COLTON, PHILO. SEXTON, } Witnesses to Sanford D. Colton and J. E. Colton's signature.

C. C. WHITE, and H. M. FINCH, } As to Z. A. Colton.

MARY ISAACS,
E. MARINER.

STATE OF WISCONSIN, }
Milwaukie County. } *ss.*

This sixth day of January, A. D., 1854, before me came the said Erastus B. Wolcott and Elizabeth J., his wife, and Zelotas A. Colton, Talcot C. Donsman, and Jane E., his wife, and acknowledged the execution of the above deed to be their free act and deed.

E. MARRINER,
Notary Public, State of Wisconsin, Milwaukie Co.

STATE OF WISCONSIN, }
County of Rock. } *ss.*

The thirtieth day of December, A. D., 1853, before me came the said Sanford D. Colton and Jane E. Colton, his wife, of the grantors of the above deed, and acknowledged the execution thereof to be their free act and deed.

CHARLES C. COLTON
Notary Public, Wisconsin.

STATE OF WISCONSIN, }
County of Milwaukie. }

On this 28th day of April, A. D., 1854, came before me Zelotas A. Colton, one of the grantors of the above deed, and acknowledged the execution thereof to be his free act and deed.

H. M. FINCH,
Notary Public, Milwaukie county, Wis.

Recorded April 28th, A. D., 1854, at 3 o'clock, P. M.

STATE OF WISCONSIN, }
Milwaukie County. }

Register's Office.

I hereby certify that the foregoing is a true and correct transcript from the records of my office, of the foregoing instruments recorded in volume forty-three of deeds, on pages 150,151, and 152, and has been by me carefully compared with said records, and that it is the whole thereof.

In testimony whereof I have hereunto set my hand this fifth day of September, A. D., 1859.

SAMUEL WAEGLI,
Register, Milwaukie County, Wisconsin.

By FRED. SCHLOEMILCH,
Deputy.

Zelotas A. Colton, being duly sworn on oath, deposed and said:

I know the complainant and defendant Noonan. I was acquainted with lot two, section 4, town 7, range 22. I was at one time, together with Sanford D. Colton, in possession of the mortgaged premises mentioned in the bill of complaint.

We bought it in 1847 of James H. Rogers, and took possession of it at that time. Sanford D. Colton sold out his interest in 1852, and I sold, the next year, to John J. Orton. We had, previously to the conveyance to Orton, sold some portion of the land to E. B. Wolcott and T. C. Donsman. We were, some of us, in possession of it till we sold to Orton, in 1852.

At the time I took possession in 1847, there were some old saw-mills up toward the north part of the land described in the mortgage. While we were in possession we built a shanty over the south-west corner of block four, which was occupied by some of the men in our employ. There was another old house further north than the one we built, occupied part of the time as a house, and part of the time as a barn. We used the saw-mill and occupied a part of the land described in the mortgage, as a yard for logs. We had timber, part of the time, on block 5. The upper house on block four was surrounded by a fence. A half or a whole acre was perhaps enclosed by the fence. From 1847 to the time we sold to Orton, there was no person in possession except my brother and myself, and those claiming under us. When we were in possession we claimed title to all the lands described in the mortgage.

Z. A. COLTON.

This indenture, made the first day of October, in the year of our Lord one thousand eight hundred and fifty-five, between John B. Lee, of Albion, Orleans county, in the State of New York, and Mary J. Lee, his wife, parties of the first part, and Josiah A. Noonan, of Milwaukie, Wis., party of the second part, Witnesseth, that the said parties of the first part, for and in consideration of the sum of four thousand dollars to him in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, have given, granted, bargained, sold, remised, released, aliened, conveyed and confirmed, and by these presents do give, grant, bargain, sell, remise, release, alien, convey and confirm unto the party of the second part, his heirs and assigns forever, all that certain piece or parcel of land lying and being in the county of Milwaukie, State of Wisconsin, described as follows, to wit: one equal undivided half-part or share of that certain tract of land bounded and described as follows, viz: Beginning in the centre of the Milwaukie river at the centre of the road represented on the recorded plat of the village of Mechanicsville, as running east and west between Blocks five (5) and six (6) in said village of Mechanicsville, running thence easterly in the centre of said street to the centre of a street running north and south between Blocks three (3) and five (5) in Mechanicsville aforesaid, thence southerly in the centre of the last mentioned street to the centre of a street running east and west between Blocks three (3) and

four (4) in said village of Mechanicsville, thence easterly in the centre of said last mentioned street to a point that would be intersected by a north and south line through the middle of Block three (3) in Mechanicsville, aforesaid, thence southerly on the line bounding the west ends of lots one, (1) two, (2) three (3) and four, (4) in Block four (4) in Mechanicsville aforesaid, to the south line of lot four (4) in Block four (4) aforesaid, thence easterly on the south line of lot four (4) in Block four (4) to the west line of a lot of land containing about one-half ($\frac{1}{2}$) an acre represented on said plat of Mechanicsville, as being nearly in a square form in the south-east corner of the town plat of Mechanicsville, aforesaid, thence southerly on the west line of said last described tract of land to the south line of the town plat of Mechanicsville, thence easterly on said last mentioned line to the east line of fractional lot two (2) in section four (4) in township seven, (7) north of range twenty-two (22) east, thence south to the south line of said fractional lot two, (2) thence westerly on the south line of said fractional lot two (2) to the centre of the Milwaukie river, thence northerly in the centre of the Milwaukie river as it winds and turns to the place of beginning. Also the privilege of damming and flowing the Milwaukie river on said fractional lot two, (2) as high as said river would be raised by maintaining a dam at least nine feet high, where a certain dam was located across said river near the south line of fractional lot two, (2) in the year 1837, as described in deed from Daniel Bigelow and Amasa Bigelow, to Herman V. Prentice, recorded in volume "C" of deeds on pages 329, as to flow of water. Together with all and singular, the hereditaments and appurtenances thereunto belonging, or in anywise appertaining; and all the estate, right, title, interest, claim or demand whatsoever of the said parties of the first part, either in law or equity, either in possession or expectancy, of, in, and to the above bargained premises, and their hereditaments and appurtenances, to have and to hold the said premises, as above described, with the hereditaments and appurtenances, unto the said party of the second part, and his heirs and assigns forever; and the said party of the first part, for himself and his heirs, the said premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against the said parties of the first part, their heirs, and against all and every person lawfully claiming or to claim the same, shall and will warrant, and by these presents forever defend.

In witness whereof, the said party of the first part hath

hereunto set his hand and seal the day and year first above written.

JOHN B. LEE, [SEAL.]
MARY J. LEE, [SEAL.]

Sealed and delivered
in presence of
[The words and figures five, (5) being written over the erasure of the words and figures four, (4) on the line numbered sixteenth, (16th) and the words and figures four, (4) being written over the erasure of the word and figure five, (5) on the line numbered eighteenth, (18th) before execution and delivery.]

FRANCIS PRENTISCE,
W. W. TREADWAY.

STATE OF WISCONSIN, }
County of Milwaukie. }

Be it remembered, that on the first day of October, A. D., 1855, personally came before me the above named John B. Lee and Mary J. Lee, his wife, to me known to be the persons who executed the said deed, and acknowledged the same to be his free act and deed, for the uses and purposes therein mentioned.

W. W. TREADWAY,
Justice of the Peace.

Recorded October 5th, A. D., 1855, at 8 o'clock, A. M.

STATE OF WISCONSIN, }
Milwaukie County. }

Register's Office.

I hereby certify that the foregoing is a true and correct transcript from the records in my office of the instrument recorded in volume fifty of Deeds, on pages 17, 18 and 19, and has been by me carefully compared with said records, and that it is the whole thereof. In testimony whereof I have hereunto set my hand this 27th day of December, A. D., 1859.

F. SCHLOEMILCH,
Dept. Register Mil. Co., Wis.

Whereas, John J. Orton has deposited in my office nine certificates of the Treasurer of the County of Milwaukie, Wisconsin, whereby it appears that the said county, of whom the said Orton is assignee, did purchase of the Treasurer of said county, lots three and four, except four acres of Schlosser (94 35-100 acres) of sec. 4, T. 7, R. 22, for the sum of $14 7-100, part of lot 5,

bounded north and east by river, south by Hubbard, west by village, (7 45-100 acres) of sec. 9, T. 7, R. 22, for the sum of twenty 78-100 dollars; land in sec. 9, T. 7, R. 22, bounded north by section line, east by lot 5, west by section line, and south by Hubbard, (37 48-100 acres) for the sum of eight 32-100 dollars; (part of the S. E. ¼ sec. 4, T. 7, R. 22, bounded north by Demster, east by Jones & Bare, west by river, and south by Allerding, (19 acres) for the sum of three 12-100 dollars); land in lot 5 of sec. 9, T. 7, R. 22, bounded north by Wolcott & Colton, west by Hergen, and south by Biergenheimer (5 25-100 acres) for the sum of one 49-100 dollars; lot 1, in block 1, village of Humboldt, of sec. 9, T. 7, R. 22, for the sum of seventy 81-100 dollars; lot 2, block 1, village of Humboldt, of sec. 9, T. 7, R. 22, for the sum of fifty-four cents; lots 5, 6, 7 and 8, in block 1, village of Humboldt, of sec. 9, T. 7, R. 22, for the sum of one 25-100 dollars; lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14, in block six, village of Humboldt, of sec. 9, T. 7, R. 22, for the sum of one 35-100 dollars, at a tax sale, held by the said Treasurer at Milwaukie, in said city, on the thirteenth day of April, 1852, for the sum of one hundred and twenty-one 75-100 dollars, being the amount aforesaid, and then due the said county of Milwaukie for taxes, cost and charges on said lands. And whereas, it appears from an examination of the records in my office, that said lands are now unredeemed from such sale.

Now, therefore, know all men by these presents, that in consideration of the said sum of one hundred and twenty-one 75-100, paid by said Orton, and of the premises, the said county of Milwaukie, and the State of Wisconsin, do hereby give, grant and convey unto the said John J. Orton, the above described premises, with all the hereditaments and appurtenances thereunto belonging, to him, his heirs and assigns, to his and their sole use and benefit forever.

In testimony whereof I have hereunto set my hand and seal this twenty-fifth day of April, A. D., 1852.

A. BADE,
Clerk Board Supervisors, Mil. Co., Wis.

In presence of
C. F. CASTON,
A. KOCH.

STATE OF WISCONSIN, } *ss.*
Milwaukie County. }

Be it known that on this twenty-fifth day of April, 1855, personally came before me Albert Bade, Clerk of the Board of Supervisors of the County of Milwaukie, to me known to be the person who executed the above instrument, and acknowledged

that he executed the same for the uses and purposes therein mentioned, for the county of Milwaukie and State of Wisconsin.

CHARLES F. RASLEN,
Notary Public, Milwaukie County.

Certificate No. 488.

UNITED STATES OF AMERICA, }
To all to whom these presents shall come, *greeting:* }

Whereas Daniel Bigelow, Senior, of Milwaukie county, Michigan Territory, has deposited in the General Land Office of the United States, a certificate of the Register of the Land Office at Green Bay, whereby it appears that full payment has been made by the said Daniel Bigelow, Sen., according to the provisions of the act of Congress of the 24th April, 1820, entitled, "An act making further provision for the sale of public lands," for the lot numbered two of section four, in township seven north, of range twenty-two east, in the District of lands subject to sale at Green Bay, Michigan Territory, containing forty-eight acres and fifty-hundredths of an acre, according to the official plat of the survey of the said lands, returned to the General Land Office by the Surveyor General, which said tract has been purchased by the said Daniel Bigelow, Senior.

Now, know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant unto the said Daniel Bigelow, Senior, and to his heirs, the said tract above described; to have and to hold the same, together with all the rights, privileges, immunities and appurtenances, of whatsoever nature, thereunto belonging, unto the said Daniel Bigelow, Senior, and to his heirs and assigns forever.

In testimony whereof I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the tenth day of August, in the year of our Lord one thousand eight hundred and thirty-seven, and of the Independence of the United States, the sixty-second.

By the President,
[SEAL.] MARTIN VAN BUREN.

By A. VAN BUREN,
Secretary.

JOSEPH S. WILSON,
Acting Recorder of the Gen. Land Office, ad interim.

Recorded volume 1, page 402.

GENERAL LAND OFFICE, September 17, 1859.

I, Joseph S. Wilson, Acting Commissioner of the General Land Office, do hereby certify, that the annexed is a true and literal exemplification from the Patent records of this Office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

JOS. S. WILSON,
Acting Commissioner of the General Land Office.

GENERAL LAND OFFICE, Sept. 17th, 1859.

SIR:—At the instance of Jason Downer, Esq., I enclose herewith a certificate copy, from the record of the patent, in favor of Daniel Bigelow, Senior, founded on certificate No. 488, and calling for lot No. 2, sec. 4, T. 7 N., R. 22 E., Green Bay District, to be used as evidence, and for the benefit of both parties, to the suit now pending in your Court.

Respectfully, your obedient servant,

JOS. S. WILSON,
Acting Commissioner.

Clerk District Court, Milwaukie, Wisconsin.

(For map, see original, page 143.)

TERRITORY OF MICHIGAN, }
Milwaukie County. }

Be it remembered, that on the fifteenth day of March, in the year of our Lord one thousand eight hundred and thirty-six, personally came before me, Albert Fowler, Esq., an acting Justice of the Peace, in and for the county aforesaid, Daniel Bigelow, of the town and county of Milwaukie, and acknowledged to have laid off a town plat upon the south-east part of the S. E. ¼ of section No. four, in township No. seven north, in range No. twenty-two east, on the east side of the Milwaukie river, which he has named Mechanicsville, of which the annexed is a true map, and that all and singular of the matters and things set forth upon the same, are, according to the true interest and meaning of the said Daniel Bigelow.

In testimony whereof, I have hereunto set my hand and seal this day and year above written.

ALBERT FOWLER, [SEAL.]
Justice of the Peace.

Recorded September 15th, A. D., 1855, at 11 o'clock, A. M.

CHARLES J. KERN,
Register, Milwaukie County, Wis.

STATE OF WISCONSIN, }
Milwaukie County. }

Register's Office.

I do hereby certify, that the above is a true and correct copy of the plat of Mechanicsville on record in my Office, in book No. 1, of plats on page 130, and the whole thereof, and the same has been compared by me with said record.

SAMUEL WAEGLI,
Register, Milwaukie County.

By FRED. SCHLOEMILCH,
Deputy.

UNITED STATES OF AMERICA, }
District of Wisconsin. } *ss.*

At a stated term of the District Court of the United States of America, for the District of Wisconsin, begun and held according to law, on the first Monday of January, A. D., 1860, at the City of Milwaukie, in said District of Wisconsin, present the Hon. Andrew G. Miller, Judge of said Court, presiding: on the eighteenth day of the term, to wit: on the thirteenth day of February, A. D., 1860, the following proceedings were had, to wit:

JOHN B. LEE,
vs.
JOSIAH A. NOONAN, LINDSEY WARD,
JASON DOWNER, LEVI HUBBELL,
and WILLIAM H. MASON.

This cause came on to be heard at this term upon the bill taken as confessed against Lindsay Ward, Jason Downer, and Levi Hubbell, and upon the answer of Josiah A. Noonan, replication, proofs and exhibits, and was argued by counsel, and thereupon upon consideration thereof it was ordered, adjudged and decreed by the Court as follows, to wit: That the report of John M. Miller, a master of this Court, wherein the sum of five thousand two hundred and twenty-two dollars and sixty-seven cents appears to be due to the said complainant at the date of said report, on the bond and mortgage in said bill mentioned for principal and interest, be and is hereby confirmed.

It is, therefore, on motion of Ogden, Brown & Ogden, of counsel for said complainant, further ordered, adjudged, and decreed, and this Court doth hereby order, adjudge, and decree that all and singular, the mortgaged premises mentioned in the bill of

complaint in this cause and hereinafter described, or so much thereof as may be sufficient to raise the amount due to the complainant for principal, interest, and costs in this cause, (and which may be sold separately without material injury to the parties interested,) be sold at public auction under the direction of the Marshal for this District, unless said mortgagor previous to such sale shall pay to said complainant the said sum of five thousand two hundred and twenty-two dollars and sixty-seven cents, and interest thereon from this date, together with the costs in this cause to be taxed.

And it is further ordered, that said sale be made at the Post Office in the city of Milwaukie, within this District; that said Marshal give public notice of the time and place of such sale by advertisement published in some newspaper printed in said county at least once in every two weeks for three months previous to the day of sale; and if no newspaper be printed in such county, then such notice shall be published in a newspaper published in an adjoining county in said District; and that said complainant or any of the parties to this cause may become the purchaser thereof; and that said Marshal execute a deed or deeds to the said purchaser or purchasers of the mortgaged premises; and that said Marshal pay to said complainant or his solicitors out of the proceeds of such sale his costs in this cause to be taxed, and also the aforesaid sum of five thousand two hundred and twenty-two dollars and sixty-seven cents and interest thereon from this date to the day of such sale, or so much thereof as the purchase money of the mortgaged premises will pay, and that said Marshal take a receipt for the amount so paid, and file the same with his report of sale; and that he bring the surplus moneys, if any there be, into Court without delay, to abide the further order of the Court.

And it is further ordered, adjudged and decreed, that the defendants and all persons claiming, or to claim from or under them be forever barred and foreclosed of and from all equity of redemption, and claim of, in and to said mortgaged premises, and every part and parcel thereof.

And it is further ordered and decreed, that the purchaser or purchasers of said mortgaged premises at such sale, be let into the possession thereof; and that any of the parties to this cause who may be in possession of said premises or any part thereof, and any person who, since the commencement of this cause has come into possession under them or either of them, deliver possession thereof to such purchaser or purchasers on production of the deed of said Marshal for such premises, and a certified copy of the order confirming the report of sale in this cause.

And it is further ordered and decreed, that, if the moneys

arising from such sale are insufficient to pay the amount due to the complainant as aforesaid with interests and costs, that said Marshal specify the amount of such deficiency in his report of the sale, and that on the coming in and confirmation of said report, the defendant, Josiah A. Noonan, who is personally liable for the payment of the debt secured by said mortgage, pay to the complainant the amount of such deficiency with interest thereon from the date of such report; and that the complainant may have execution therefor.

The description of the property authorized to be sold under and by virtue of this decree, so far as the same can be ascertained from the mortgage above referred to, or from the Bill of complainant in this cause is as follows, viz:

The following real estate being and lying in the county of Milwaukie, and State of Wisconsin, and known and described as follows, to wit: an equal undivided half part or share of that certain tract of land bounded and described as follows, viz: Beginning in the centre of the Milwaukie river at the centre of the road represented on the recorded plat of the village of Mechanicsville as running east and west between blocks five (5) and six (6) in said village of Mechanicsville; running thence easterly in the centre of the said street to the centre of a street running north and south between blocks three (3) and five (5) in Mechanicsville, aforesaid; thence southerly in the centre of said last mentioned street to the centre of a street running east and west between blocks three (3) and four (4) in said village of Mechanicsville; thence easterly in the centre of said last mentioned street to a point that would be intersected by a north and south line through the middle of block three (3) in Mechanicsville, aforesaid; thence southerly on the line bounding the west end of lots one (1,) two (2,) three (3) and four (4), in block four (4,) in Mechanicsville, aforesaid, to the south line of lot four (4), in block four (4,) aforesaid; thence easterly on the south line of said lot four (4,) in block four (4,) to the west line of a lot of land containing about one-half ($\frac{1}{2}$) of an acre represented on said plot of Mechanicsville as being nearly in a square form in the south-east corner of the town plat of Mechanicsville, aforesaid; thence southerly on the west line of said last described tract of land, to the south line of the town plat of Mechanicsville; thence easterly on said last mentioned line to the east line of fractional lot two (2,) in section number four (4,) in township number seven (7,) north of range number twenty-two (22) east; thence south to the south line of said fractional lot number two (2); thence westerly on the south line of said fractional lot number two (2) to the centre of the Milwaukie river; thence northerly in the centre of the Milwaukie river as it winds and turns to the place of beginning;

also the privilege of damming and flowing the Milwaukie river on said fractional lot number two (2) as high as the said river would be raised by maintaining a dam at least nine (9) feet high, where a certain dam was located across said river near the south line of fractional lot two (2,) in the year 1837.

A. G. MILLER.

Appeal, &c.

February 15, 1860. This day came Josiah A. Noonan, one of these defendants, and prayed an appeal to the Supreme Court of the United States, and entered into bond to the complainant in the penalty of ten thousand dollars, with Peter McNab, J. R. Treat and William Lumsden. The sureties conditioned that the said Josiah A. Noonan shall prosecute his appeal to effect, and under all damages and costs, if he shall fail to make good his plea or appeal. Whereupon it is ordered by the Judge, that the said bond and sureties be and hereby are proved, and that the said appeal be and hereby is allowed, and that a citation be issued.

Which bond is as follows:

Bond.

Know all men by these presents, that we, Josiah A. Noonan, Peter McNab, J. R. Treat and Wm. Lumsden, are held and firmly bound unto John B. Lee in the sum of ten thousand dollars, to be paid to the said John B. Lee, his executors or administrators, to which payment, well and truly to be made, we bind ourselves, and each of us, our heirs, executors and administrators, firmly by these presents. Sealed with our seals, and dated this fourteenth day of February, A. D., 1860.

Whereas, the above named Josiah A. Noonan has appealed to the Supreme Court of the United States from the final decree of United States District Court, in and for the District of Wisconsin, made and rendered in a certain cause in said District Court in Equity, wherein said John B. Lee was complainant, and said Josiah A. Noonan, Lyndsey Ward, Jason Douner, Levi Hubbell and William H. Mason, defendants.

Now, therefore, the condition of this obligation is such, that if the above bounden Josiah A. Noonan shall prosecute his said appeal to effect and answer all damages and costs if he shall fail to make good his plea or appeal. Then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

J. A. NOONAN, [SEAL.]
P. McNAB, [SEAL.]
J. R. TREAT, [SEAL.]
WILLIAM LUMSDEN, [SEAL.]

Signed, sealed and delivered
in presence of JAMES WILSON.

STATE AND DISTRICT OF WISCONSIN, }
County of Milwaukie. }

Peter McNab being duly sworn, doth depose and say that he executed the within bond, and that he is worth ten thousand dollars over and above all debts, liabilities and property, exempt by law from execution, and that he is a resident of the State of Wisconsin.

P. McNAB.

Sworn to before me this 14th day of February, 1860.

JAMES WILSON,
Notary Public.

STATE AND DISTRICT OF WISCONSIN, }
County of Milwaukie. }

Joseph R. Treat being duly sworn, doth depose and say, that he executed the within bond, and that he is worth ten thousand dollars, liabilities and property, exempted by law from execution, and that he is a resident of the State of Wisconsin.

J. R. TREAT.

Sworn to before me this 15th day of February, 1860.

JAMES WILSON,
Notary Public.

STATE AND DISTRICT OF WISCONSIN, }
County of Milwaukie. }

William Lumsden being duly sworn, doth depose and say, that he executed the within bond, and that he is worth ten thousand dollars over and above all debts, liabilities and property, exempted by law from execution, and that he is a resident of the State of Wisconsin.

WILLIAM LUMSDEN.

Sworn to before me this 15th day of February, 1860.

JAMES WILSON,
Notary Public.

February 15, 1860.

This bond and sureties are approved.

A. G. MILLER,
Judge, &c.

UNITED STATES OF AMERICA, }
District of Wisconsin, } *ss.*

I, John Miller, Clerk of the District Court of the United States of America, for the District of Wisconsin, do hereby certify, that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, now on file, and remaining of record in my office, being a full and complete exemplification of the record and proceedings in the suit of John B. Lee against Josiah A. Noonan and others.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said Court, at the City of Milwaukie, in the said District of Wisconsin, this fifteenth day of November, in the year of our Lord one thousand eight hundred and sixty, and of the Independence of the said United States the eighty-fifth. [SEAL.]

J. M. MILLER,
Clerk.

United States of America to John B. Lee, *greeting:*

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to an appeal filed in the Clerk's Office of the District Court of the United States for the District of Wisconsin, wherein Josiah A. Noonan is appellant and you are appellee, to show cause, if any there be, why the decree in the said appeal mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this fifteenth day of February, in the year of our Lord one thousand eight hundred and sixty, and of our Independence the eighty-fourth.

A. G. MILLER,
Judge of the District Court of the U. S. for the District of Wisconsin.

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SUPREME COURT OF THE UNITED STATES.

No. 144.—DECEMBER TERM, 1861.

JOSIAH A. NOONAN, APPELLANT,

vs.

JOHN B. LEE, RESPONDENT.

Appeal from the District Court of the United States for the district of Wisconsin.

Lee filed a bill to foreclose a mortgage given to him by Noonan, on which he claimed there was due $4,000 and interest from the 1st day of October, 1855, praying a decree of sale of the mortgaged premises, and also a decree for any balance that might be due after applying the proceeds of such sale.

Noonan filed an answer, admitting the execution of the mortgage, and setting up, by way of avoidance, that the consideration of said mortgage was a conveyance by said Lee, by warranty deed, of the land mortgaged, to which said Lee had no title:

Also an agreement endorsed on the bond, and signed by said Lee, agreeing that, in case his title to said land should fail, except as to the United States for a portion of the river, he would not enforce the bond, and if incumbrances should be found thereon, the amount thereof should be deducted from the amount due on the said bond.

A general replication was filed by complainant. Testimony was taken, and evidence introduced under a stipulation.

The controversy turns upon the truth of the answer, denying the title of the complainant to the premises in question.

GEO. S. GIDEON, printer, 511 Ninth street, Washington.

This question is to be determined by considering the legal effect of certain facts which will be presented in connection with the legal questions involved.

If the complainant did not convey to the defendant the legal title to the mortgaged premises, he is not entitled to a decree of foreclosure, nor to a decree for any sum to be paid by the defendant.

There are two reasons why the complainant is not entitled to the decree entered in this cause in the court below, the title having failed:

1. The parties agreed, in case of the failure of the title, that the bonds should not be enforced. The following is the agreement:

R., p. 7: "I agree, if my title fails to the property for the consideration for which this bond is given, except as against the United States, for the portion of the river beyond the meandered line, that I will not enforce this bond; and if any incumbrances shall be found, that the amount of the same shall be deducted from the moneys to fall due on this bond."

This agreement, endorsed on the bond and signed by the complainant at the time of its execution, forms a part of that instrument, and renders it conditional. If the complainant had not the legal title, or it should fail, then the bond was not to have effect. The title has failed, and hence, by the agreement itself, the complainant is not entitled to recover.

2. The title having failed, under the law, without reference to the agreement, the complainant is not entitled to recover.

The complainant's deed to the defendant for the land in question contains a covenant of warranty. (R., p. 91.) This deed was the sole consideration for the bond and mortgage. On this covenant the defendant, on being ousted, would have a right of action to recover back the consideration, and such damages as may be authorized by law. The policy of the law is against permitting a recovery under such circumstances, and then turning the defendant over to a suit to recover under the covenant. It permits the latter to set up the failure by way of defence, which avoids unnecessary litigation.

But, aside from the covenant of warranty, the defendant has the legal right to set up, by way of defence, that the complainant conveyed no title, and that, consequently, there was no consideration for the bond and mortgage. If there was no consideration to support them, they must fail, and no decree can be made to enforce them.

The following cases are conclusive upon this question:

Allen vs. Hammond, 11 Pet., 63; *Lewis vs. Wilson*, 1 Edws. Ch.

R., 305; *McAllister vs. Read*, 4 Wen., 483; *Miller vs. Smith*, 1 Mason, 437; *Harrison vs. Stratton*, 22 Pic., 510; *Becker vs. Vrooman*, 13 John. R., 302; *Evans vs. Gray*, 12 Mar. La. R., 475, 483, 648; *Gray vs. Hankinson*, 1 Bay., 276; *Tucker vs. Gordon*, 4 Dessau., 53, 58; *Still vs. Hall*, 20 Wen., 51; *McCarty vs. Leggett*, 3 Hill, 134; *Bingham vs. Weeder*, 1 Coms., 509; *Christy vs. Reynolds*, 16 Serj. & R., 258; *Steinbower vs. Witman*, 1 Serj. & R.; *Hart vs. Porter*, 5 id., 201; *Park vs. Kelly*, 13 Serj. & R., 165; *Hooker vs. Folsom*, 4 Porter Ind. R., 9; *Conklin vs. Bowman*, 7 Ind. R., 533.

The complainant's chain of title is as follows:

1. A patent to D. Bigelow, in 1837. (R., p. 94.)
2. A deed from D. Bigelow to Amosa Bigelow, dated in 1836. (R., p. 37.)
3. A deed from D. & A. Bigelow, dated June 29, 1837, to H. V. Prentice. (R., p. 39.)
4. Prentice conveyed, July 27, 1837, to J. H. Rogers, and took back a mortgage. (R., pp. 41, 44.)
5. On the 22d June, 1840, Prentice obtained a decree of foreclosure, and on the 5th of October thereafter received a master's deed. (R., pp. 27, 47.)
6. On the 4th of August, 1847, Prentice conveyed to Church & Clark. (R., p. 49.)
7. On the 7th of July, 1848, Church & Clark conveyed to complainant. (R., p. 52.)

This is the title which complainant assumes to have conveyed to the defendant. He had no other to convey. If, for any cause, it turns out that this chain was broken, and did not vest the legal title in the defendant, the complainant must fail.

The defendant insists that these conveyances subsequent to 1840 are void, and that the title passed to others, under tax sales.

Orton's chain of title is as follows:

First. The tax titles to Rogers, subsequent to his mortgage to Prentice. (R., p. 44.)

1. Three tax-sale deeds from Craft's, dated the 28th of October, 1845, (R., pp. 68, 73, 75,) and recorded on the 23d of December.
2. A tax-sale deed from Beam, dated the 17th of February, 1846, (R., p. 66,) and recorded on the 21st of December.
3. A tax deed from Ewarts, dated the 12th of April, 1848, (R., p. 61,) and recorded on the next day.
4. A tax deed from Lorenzen, dated the 17th of April, 1849, (R., p. 63,) and recorded the same day.
5. A tax-sale deed by Bade, dated April 25, 1852, (5,) and duly acknowledged on the 25th of April, 1855. (R., pp. 92, 93.)

These tax deeds were all subsequent to Prentice's foreclosure of his mortgage.

Second. Rogers conveyed to Z. A. & S. D. Colton, on the 22d of June, 1847, with covenant of warranty and seizin. (R., p. 71.)

Third. Colton and others, on the first of November, 1852, conveyed, with covenants of warranty and seizin, to Orton. (R., p. 85.)

Fourth. A deed by Wolcott, Dousman, and the Coltons, with warranty and covenant of seizin, dated 19th October, 1853, to Orton. (R., p. 86.)

These deeds vest in Orton the title which Rogers acquired under the tax sales, which defeats that of Prentice to Church & Clark, and which they conveyed to complainant.

FIRST. *These tax titles became conclusive at the expiration of three years from the time they were recorded, and also by three years' adverse possession.*

The first tax title was recorded on the 23d of December, 1845, and the last on the 17th of April, 1849.

These tax deeds, in form, conveyed the mortgaged premises to the purchaser at the tax sales, the effect of which is provided in the statute, (R. L., 1849, p. 162,) as follows:

§ 109. "If any land sold for taxes shall not be redeemed as aforesaid, the clerk of the board of supervisors of the county where the same was sold shall, after the expiration of the time prescribed by law for the redemption thereof, on the presentation to him of the certificate of sale, execute, in the name of his county, as clerk of the board of supervisors thereof, under his hand and seal, to the purchaser, his heirs or assigns, a deed of the land so remaining unredeemed, and shall acknowledge the same, which shall vest in the grantee an absolute estate in fee simple of such land, subject, however, to all unpaid taxes and charges, which are a lien thereon, and to redemption, as provided in this chapter; and such deed, duly witnessed and acknowledged, shall be prima facie evidence of the regularity of all the proceedings, from the valuation of the land by the assessor inclusive, up to the execution of the deed, and may be recorded with the like effect as other conveyances of land."

These deeds were prima facie evidence of the transfer of the title from the former owner to the purchaser under the deed. No evidence was given in this case to overcome this presumption in favor of the purchaser's title.

That Rogers, and those claiming under him, were in possession, so as to throw the burden of action upon Prentice and his grantees, Church and Clark, and complainant, is clearly shown by the following evidence:

Blossom's Ev., (R., p. 16.,) who represented Prentice, testified, that he received rents for him up to 1845, 1846, *or* 1847, on some part of the property, but could not say who was in possession. On his cross-examination, he says: "I can't tell whether it was after 1843 or not. It is my impression some portions of the rents were paid to Rogers."

Colton's Ev., (R., p. 90): "We bought it in 1847 of James H. Rogers, and took possession at that time. Sanford D. Colton sold out his interest in 1852, and I sold the next year to John J. Orton. We had, previously to the conveyance to Orton, sold some portion of the land to E. B. Wolcott and T. C. Dousman. We were, some of us, in posssession of it until we sold to Orton in 1852.

"From 1847 to the time we sold to Orton, there was no person in possession, except my brother and myself, and those claiming under us. When we were in possession, we claimed title to all the lands described in the mortgage."

Orton's Ev., (R., pp. 81, 82): "I am in possession of all the land described in the mortgage, referred to in the bill of complaint, and claim to hold the same as owner. I came into possession of it November 1, 1852, under deed, of which copies are shown me, marked A and B, and held possession of it under those deeds, and the tax-title deeds above referred to, (which papers, marked A and B, are hereto annexed as exhibits.) I have held possession of the land to the present time."

From this evidence, it is certain that neither Prentice nor his grantees had been in possession since the first of these tax titles; but, on the contrary, the tax sale purchaser, Rogers, or his grantees, were then in possession, and have remained so ever since. Consequently, the statute run against the grantors of the complainants, and he and they are forever barred.

Section 123 of the act concerning taxes, (R. L., 1849, p. 164,) is as follows: "Any suit or proceeding for the recovery of land sold for taxes, except in cases where the taxes have been paid, or the lands redeemed, as provided by law, shall be commenced within three years from the time of recording the tax deed of sale and not thereafter."

If the purchaser had been out, and the previous owner in possession, the former would have been barred, if he had not brought suit within three years. But the purchaser, and those claiming under him, were, at the time of the recording, in actual and exclusive possession. Hence, at the end of the three years, the tax title became perfect. The following cases, decided in the Wiscon-

sin State court, construing this statute, are conclusive upon this question: *Edgerton vs. Bird*, 6 Wis. R., 527. Head note: "Color of title is that which in appearance is title, but which in reality is no title."

"A claim of property under a conveyance, however inadequate to carry the true title, is a claim under color of title, and will draw to the possession of the grantee the protection of the statutes of limitation, other requisites of the statute being complied with.

"The cases of *Whitney vs. Powell*, 1 Chonol, 52; and *Woodward vs. Reynolds*, id., 224, considered and reaffirmed.

"A tax deed, informal and defective in substance, is admissible to show color of title in the defendant, to bring him within the protection of the statute of limitation.

"Suits for the recovery of land sold for taxes, except in cases where the taxes have been paid, or the land redeemed according to law, must be commenced within three years from the recording of the tax deed of sale, or no recovery can be had.

"Possession, accompanied with a claim of title under a tax deed, void for informality, is adverse possession."

Delaplane vs. Cook, 7 Wis. R., 44. Head note: "By section 109, of chapter 15 of the Revised Statutes of 1849, a tax deed of land sold for taxes and unredeemed, vests in the purchaser the fee simple of such land, and such deed, duly executed and acknowledged, is *prima facie* evidence of all the proceedings, from the valuation by the assessors, inclusive, up to the execution of the deed."

Sprecker vs. Wakeley, 11 Wis. R., 432. Head note: "In an action of ejectment, a tax deed may be offered in evidence, either as a link in establishing title, or in connection with proof of possession, to show that the party is entitled to the protection afforded by the statute of limitations.

"An action for the recovery of lands sold for taxes must be commenced within three years from the recording of the deed."

Hill vs. Kricke, 11 Wis. R., 442. Head note: "Under section 123, ch. 15, R. S. 1849, an action for the recovery of land was completely barred in three years after the recording of the deed of the lands sold for taxes, unless the taxes had been paid, or the lands redeemed according to law.

"Edgerton vs. Bird, 6 Wis. R., 527; and Sprecker vs. Wakeley, supra, 432, considered and approved.

"A party who puts a tax deed upon record, sets up such a title to land as will enable the party claiming to own the same land, to maintain an action of ejectment against him, even though the tax title has or has not entered into actual possession of the same."

In *Knox vs. Cleveland*, not yet reported, the court expressly reaffirm. Hill vs. Kricke, and other former decisions, to the same effect.

Under these decisions, this question cannot be considered an

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open one in Wisconsin. The complainant, if he ever acquired title to the land in question, lost it under the statute law of the State, and it became vested, beyond recall, in the holder of these tax titles. He had nothing to convey, and, therefore, he gave no consideration for the mortgage, and hence cannot enforce it.

SECOND. *The conveyances from Prentice to Church and Clark, and from them to Lee, were void, because made by grantors out of possession when others were holding adversely, claiming title under conveyances prima facie good.*

Prentice conveyed to Church and Clark on the 4th of August, 1847, (R., p. 49,) and they conveyed to complainant on the 7th of July, 1848. (R., p. 52.)

Rogers conveyed to the Coltons on the 22d of June, 1817, (R., p. 71,) and they went into immediate possession, and remained in, until they sold to Orton in 1852, who entered and continued in possession until the time of the hearing.

Rogers' Ev., (R., p. 57): "I think, in 1840 or 1841, I had exclusive possession of all that part of lot two embraced in the pretended plat of Mechanicsville, and embraced in the mortgage mentioned in the bill of complaint in this cause. * * * At this time, I claimed exclusive title to all the premises embraced in the mortgage under any (my) tax deed and other conveyances. I kept exclusive possession of those premises up to the time I sold to Zelotus A. Colton and Sanford D. Colton, on the 22d of June, 1847."

Z. A. Colton's Ev., (R., p. 90): "We bought it, in 1847, of James H. Rogers, and took possession of it at that time. Sanford D. Colton sold out his interest in 1852, and I sold the next year to John Orton. We had, previously to the conveyance to Orton, sold some portion of the land to E. B. Wolcott and T. C. Dousman. We were, some of us, in possession of it till we sold to Orton in 1852."

Orton's Ev., (R., p. 82): "I am in possession of the land described in the mortgage referred to in the bill of complaint, and claim to hold the same as owner. I came in possession of it November 1, 1852, under deeds, of which copies are shown me, and marked A and B, and held possession of it under those deeds and the tax-title deed above referred to. I have held possession of the land to the present time."

This evidence shows conclusively, that, from 1840 or 1841, the land was in possession of persons claiming adversely to Prentice; and, after 1845, it was held under tax titles, and was so held when Church and Clark and the complainant took their conveyances, and when Lee conveyed to Noonan.

Under the common law such conveyances were void. (*Boroman Devzee vs. Wathen,* 2 McLean, 376, 380.)

In *Jackson vs. Demont,* 9 John. R., 55, 58, Kent says: "Nothing passes by such a deed, for right of entry or a right of action was not assignable by the common law." (*Williams vs. Jackson,* 5 John. R., 489; *Jackson vs. Todd,* 2 Caine's R., 183.)

This is the settled rule in Wisconsin, as is shown in the following cases decided by the highest judicial tribunal in that State.

Whitney vs. Powell, 1 Chandl., 52. Head note: "A party, plaintiff in ejectment, seeking to recover under a deed of lands, possession of which is in another, who claims title by virtue of a conveyance from a third person, cannot maintain ejectment against the latter for the recovery of the possession. Possession under a paper title will defeat a person, who, during such possession, takes title from another claimant out of possession at the time of the execution of the deed."

Woodward vs. McReynolds, 1 Chandl., 244. Head note: "Adverse possession, in order to be effective to defeat the title of the true owner or his grantee, must consist of an occupancy of the land in good faith, and under the belief that the claimant had a good title.

"An adverse possession, which is not characterized with good faith and honesty, is a mere sham, and cannot avail as against the true owner or his grantee."

These cases were again considered and affirmed by the supreme court of the State, in *Edgerton vs. Bird,* 6 Wis. R., 527.

These decisions of the highest court in the State, concerning the title to real estate, under the cases of *Jackson vs. Chew,* (12 Whea., 153, 167,) and *Henderson vs. Griffin,* (5 Pet., 151,) where it was held that the State decisions in relation to title to lands ought to be followed in this court, must control its determination now; and these conveyances must be declared void; and, if so declared, the complainant conveyed no title to the defendant, and there was no consideration to support the mortgage.

THIRD. *The conveyance from claimant to defendant is void for uncertainty, and therefore it conveyed no title to the land in question; and, consequently, there was no consideration to support the mortgage.*

By referring to the description of the land in the deed by claimant to defendant, it will be seen that it begins on the Milwaukie river, and then runs along certain streets in, and includes certain

portions of, Mechanicsville, and no land anywhere else; and it refers to a plat thereof. By referring to said plat, and the acknowledgment thereon, it will be seen that Mechanicsville was laid out "upon the *southeast parts of the southeast quarter section No. four*, in township No. seven north, in range twenty-two east, on the east side of Milwaukie river." (R., p. 95.)

It is conceded by the complainant, and proved by Orton, that the land described in the above acknowledgment lies at a distance from the river, and that the town was not, in fact, laid out upon it. The plat of Mechanicsville is referred to, and forms a part of the description in the deed. When we turn to it, there are two descriptions found upon its face, which are entirely different from each other. The description in the deed furnishes no means of determining which is to control. Complainant may say that the land sold lies in the southeast part of the southeast quarter section No. four; while the defendant may insist that it lies upon and includes a portion of Milwaukie river. The question is to be tried by the deed itself, and this fails to tell us where the land lies, as it refers to a plat which contains inconsistent descriptions. This renders the description so uncertain, that the deed is void. If void for uncertainty, it conveyed nothing; and hence there was no consideration to support the note and mortgage.

FOURTH. *The description given in the deed, which refers to the plat and includes portions of the town, being contrary to the statute of the State, the deed is illegal and void, and conveyed no title to the defendant to support the note and mortgage.*

At an early day in the west, the local legislatures acted upon the subject of laying out towns and platting them. The first laws were passed by the legislature of Michigan, when the now State of Wisconsin formed a portion of that territory. The principal features of the first act have run through subsequent legislation, and now form a part of the revised laws of Wisconsin.

The plat in question purports to have been made and acknowledged in 1836.

The following provisions of law were then in force, what is now Wisconsin being then a part of the territory of Michigan:

Laws of Michigan, compiled in 1833, *p.* 531:

§ 1. That whenever any town shall be hereafter laid out within this Territory, the proprietors of such town shall cause a true map or plat thereof to be recorded in the registry of the county where the same lies, before any lot or lots therein be offered for sale; and if any person or persons shall sell, or offer for sale, any lot or lots

within such town before the same be recorded as aforesaid, such person or persons shall forfeit and pay a sum of ten dollars for every lot so sold.

§ 2. That such maps or plats as are required by this act to be recorded, shall particularly set forth and describe all the public grounds within such town by its boundaries, courses, and extent, and whether it be intended for streets, alleys, commons, or other public uses, and all the lots intended for sale by progressive numbers, and their precise length and breadth, &c.

§ 3 imposes a penalty for recording a plat which does not show the above.

Nearly all the conveyances of the land in question prior to the 15th of September, 1855, under which complainant claims, refer to and purport to convey lands in said town. But said plat was not recorded prior to the last above date.

The plat which was recorded in 1855 does not conform in its descriptions to the provisions of the second section of the act of 1833, above cited. The penalty specified in the third section attached for recording this plat.

But, inasmuch as this plat was not recorded prior to the enactment of further provisions, it is insisted that the party was bound to conform to the provisions of law in force at the time the recording actually took place. These provisions are found in the Revised Laws of Wisconsin.

Laws of Wisconsin, revision of 1849, *p.* 257:

§ 1. When any person wishes to lay out a town in this State, or an addition or subdivision of out-lots, such person shall cause the same to be surveyed, and a plat thereof made, which shall particularly describe and set forth all the streets, alleys, commons, or public grounds, and all in and out-lots, or fractional lots within, adjoining, or adjacent to said town; giving the names, widths, courses, boundaries, and extent of all such streets and alleys.

§ 2. All the lots intended for sale shall be numbered in progressive numbers, or by the squares in which they are situated, and their precise length and width shall be stated on said plat or map; and out-lots shall not exceed ten acres in size; and shall in like manner be surveyed and numbered, and their precise length and width shall be stated on the plat or map, together with any street, alleys, or roads which shall divide or border on the same.

§ 3 relates to stone monuments at the corners.

§ 4. The plat or map, after being completed, shall be *certified by the surveyor;* and the officers, and every person or persons, whose duty it may be to comply with the foregoing requisition, shall, at or before the time of offering such plat or map for record, acknowledge the same before some person authorized to take the acknowledgment of deeds. A certificate of such acknowledgment

shall, by the officer taking the same, be endorsed on the plat or map; which certificate of the survey and acknowledgment shall also be recorded, and form a part of the record.

§ 6. To be recorded in the county register's office.

§ 7. When any town, addition, or subdivision of out-lots has been heretofore laid out, and lots sold in this State, either by county agents, commissioners, or other persons, and a plat or map has not been acknowlndged and recorded in conformity to the acts heretofore in force, it shall be the duty, and it is hereby required of the present county supervisors, or a majority of them, in such county, or other person or persons, proprietor or proprietors, who have laid out the same, or his, her, or their legal representatives, to have the same fairly, fully, and clearly made out, certified, and acknowledged and recorded in the proper county, in the form and manner required by this chapter; noticing and particularly describing the donation of land or otherwise to individual societies, bodies politic, or for common or public uses: Provided, That if the lots shall be differently numbered, and sales made, and they cannot well be changed, they shall be returned as originally stated; but, in all other respect, the plat or map shall conform to the requisitions of this chapter.

§ 8 relates to fees.

§ 9. If any person shall dispose of, offer for sale, or lease for any time, any out or in-lots, in any town, or addition to any town or city, or any part thereof, which shall hereafter be laid out, until all the foregoing provisions of this chapter shall have been complied with, every person so offending shall forfeit and pay the sum of twenty-five dollars for each and every lot, or part of a lot, sold or disposed of, leased or offered for sale.

The plat in question fails to conform to these provisions in the following particulars:

1. It does not gives the names, widths, courses, boundaries, or extent of the streets.

2. It is not certified by the surveyor.

Under these circumstances, the plat could not be legally recorded; and before it was so recorded, it was not lawful to sell any portion of the town. The town could not be known as such by virtue of the survey and plat.

It being illegal to make sales of town lots and squares before the plat was legally made, certified, and recorded, title could not pass under a deed containing only descriptions taken from the plat. A thing forbidden cannot be legal, nor form a legal consideration for an obligation.

In *Craig vs. The State of Missouri*, (4 Pet., 410, 436,) this court said: "It has been long settled, that a promise made in consideration of an act which is forbidden by law, is void."

The present case falls within the principle thus laid down. The sale of lots and squares of a tract of land laid out as a town, without making and recording a plat in which the names, widths, courses, boundaries, and extent of the streets are not given, and which is not certified by the surveyor, is forbidden by law, and therefore nothing passes by such a sale. The object of the law was to secure the rights of the public, and to avoid confusion and uncertainty. If the duty required of the surveyor and party had been properly performed, some of the present questions would have been avoided. But it was omitted, and those claiming under a forbidden sale must bear the consequences.

R. H. GILLET,
Of Counsel for Deft.

Dated January 29, 1862..

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Supreme Court United States of America.

JOSIAH A. NOONAN, APPELLANT,
vs.
JOHN B LEE.
} IN CHANCERY.

Statement of Case.

JAMES S. BROWN,
Attorney for Appellant.

G. S. GIDEON & Co., Printers,

SUPREME COURT

OF THE

UNITED STATES OF AMERICA.

JOSIAH A. NOONAN, Appellant,
vs.
JOHN B. LEE.
} In Chancery.

Statement of Case.

The appellee (complainant below) filed his bill to foreclose a mortgage given by the appellant, on the first day of October, A. D. 1855, upon an undivided interest in part of fractional lot 2, of section 4, described in said mortgage by metes and bounds, to secure the payment of $4,000, in four equal annual instalments, in 1, 2, 3, and 4 years from that date, with interest annually on all sums unpaid at seven per cent., and with a clause making the whole sum due in case of failure to meet any one instalment, according to the condition of an accompanying bond. The bill alleges the non-payment of principal and interest, a demand of the money, notice of an intention to consider the whole amount due, &c. It claims that the complainant is entitled to a decree for the whole $4,000 and interest due. It has the usual prayer for relief. The mortgage describes an undivided interest equal to about 24 acres (see patent, p. 94,) by metes and bounds, but refer for starting points and courses to the streets and blocks on the plat of the village of Mechanicsville.

The answer sets up: 1st. That the mortgage was given to secure the purchase money of the mortgaged premises, which were conveyed to the defendant by the complainant, by deed with covenants of warranty. 2d. That on the back of said bond there was an endorsement signed by the complainant in the words following, to wit:

"I agree, if my title fails to the property for the consideration of which this bond is given, except as against the United States, for a portion of the river beyond the meandered line, that I will not enforce this bond, and that if any incumbrances shall be found,

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the amount of the same may be deducted from the moneys to fall due on this bond;" that the plat of Mechanicsville referred to in the deed and mortgage was not a legal plat; that by the law of Wisconsin parties were prohibited from selling lots in any town or city without a legal plat, and that said deed and mortgage, being made in violation of law, were void; that said village appears by the original plat to have been located on the SOUTHEAST qr. of sec. 4, and that said complainant had no title to any part of said qr.; that said location was a *mistake* for the SOUTHWEST qr., where it was intended to locate the same, and that the deed to the defendant was void and passed no title; that one John J. Orton, at the date of said mortgage, was in possession of the whole or nearly all the land embraced in said deed, claiming title thereto; and that, at said date, he had title to the same in fee simple; that said complainant had no title thereto, and did not convey any right to erect said dam; and that complainant's right to said water-power failed, and the bond and mortgage ought not to be enforced; that the defendant was ready to reconvey upon surrender of his bond and mortgage.

To this answer the complainant filed a republication.

The complainant produced the bond conditioned as set forth in the bill and the mortgage. (p. 12 of Printed Record.)

He also traces his title from the United States, as follows:

1st. Patent from the United States to Daniel Bigelow of lot 2, sec. 4, town. 7, R. 22. (p. 94.)

2d. Daniel Bigelow to Amasa Bigelow of $\frac{1}{8}$ (with certain reservations) of said lot. (p. 37.)

3d. Daniel Bigelow and Amasa Bigelow to Herman V. Prentice a warranty deed of the part of lot 2 described in the mortgage, with other things. (p. 39)

4th. Herman V. Prentice to James H. Rogers of the mortgaged premises; deed dated July 27th, A. D. 1837. (p. 41.)

5th. James H. Rogers to Herman V. Prentice a mortgage of the same date upon the same premises to secure purchase money. (p. 44.)

6th. Proceedings in chancery to foreclose said mortgage. (p. 18.)

7th. Master's deed to said Prentice. (p. 47.)

8th. The Master's report of sale. (p. 35.)

9th. The order of confirmation, dated November 25th, 1840. (p. 36.)

The defendant, to defeat this title, relies, 1st, upon the allegation of the answer, that by the plat the words "southeast $\frac{1}{4}$" are substituted for "southwest $\frac{1}{4}$." (p. 14.)

On the contrary, it is shown by James H. Rogers (witness for defendant) that the village of Mechanicsville was notoriously situated on lot 2, (p. 57,) and all the deeds by which the defendant claims to defeat the title of the complainant refer to that village.

The defendant also for like purposes introduced divers tax deeds of lots in the village of Mechanicsville, but without showing the size or location of the lots, or that they were included within the mortgaged premises.

These deeds were as follows, to wit:

1st. A conveyance by Charles P. Everts, clerk of the Board of Supervisors, under the seal of said Board, to James H. Rogers, dated April 12, 1848, of divers lots in said village for sums amounting in the aggregate to five dollars and ninety-two cents, being the taxes for 1844. Charles P. Everts is stated in the deed to be the GRANTOR. It does not state a notice of forfeiture, although it purports to detail the preliminary proceedings. (p. 61.)

2d. A tax deed in the same form for the same year, signed by said Everts, clerk, including some of the same lots described in said deed, and also other lots. (p. 77.)

3d. A tax deed for divers lots for the year 1845 to said Rogers, dated in 1849, signed by Charles Lorenzion, clerk, and sealed with seal of the supervisors, and in same form as above. (p 63.)

4th. A tax deed to James H. Rogers for the undivided half of certain lots, and the whole of certain other lots, for the taxes of the year 1840, amounting in all to seventeen dollars and twenty-four cents, dated Feb. 17th, 1846, by Ream, clerk, with same form and seal as above. (p. 66.)

5th. A tax deed to said Rogers for the same year of divers lots given by Craft, clerk, Oct. 8th, 1845, in the same form and seal above. (p. 73.)

6th. Tax deed to said Rogers for 1839 for divers lots given by Craft, clerk, with same seal and form as above. (p. 67.)

7th. Another deed of the whole of some lots and the half of other lots to Rogers for taxes of same year, with same seal and in same form as above, dated Oct. 28, 1845.

8th. Deed, with covenants of warranty, of Rogers for 22 acres *undivided* of said lot 2, in said sec 4 and ½, of water power, and *all his right, title, and interest in said lot* 2, to Z. A. and S. D. Cotton, dated June 22, 1847. (p. 71.)

9th. Warranty deed from said Cotton, Wolcott, *et al.*, to John J. Orton, of west part of north 19½ acres of said lot 2, (describing by metes and bounds;) also undivided ¼ of 26 acres in said lot, also 22 acres, more or less, *undivided*, in said lot (making the whole interest in said lot conveyed equal to 31½ acres,) dated Nov. 1, 1852. (p. 83.)

10th. Deed with covenants of warranty, dated Oct. 9, 1853, from same to same, of part of the same premises. (p. 86.)

11th. A tax deed to said Orton for taxes of 1852, of several lots in blocks 1 and 6. Deed dated 25th April, 1852; acknowledged 25th April, 1855.

12th. A map of Mechanicsvile. (p. 143 of original record.)

13th. The certificate attached to the map, p. 95, naming southeast of southeast instead of the southeast of SOUTHWEST quarter.

The defendants also introduced as a witness James H. Rogers, who testified (with other things:)

1st. That he was in possession of lot 1 in 1835, and claimed it under deed from Daniel Bigelow, Daniel Bigelow, Jr., and Amasa Bigelow, and from the tax deeds before referred to.

2d. That there were 1 or 2 houses and a saw-mill on that lot; that he and Bigelow occupied the premises jointly in 1836, and that all the lot but 18 acres was then included.

3d. That from 1840 or 1841 he had exclusive possession of the whole premises and claimed to be *sole* OWNER. (p. 57.)

4th. That the village of Mechanicsville was publicly and notoriously known to be situated on said lot 2.

5th. That he had mortgaged to Prentice in 1837.

6th. That he claimed that the foreclosure of Prentice for some cause was void, but was not sure but that Prentice took back the land by amicable arrangement.

7th. That he took possession of the undivided half under a deed from Bigelow. (p. 58.)

The defendant also introduced John J. Orton, who testified:

1st. That he *did* NOT know Mechanicsville, but knew of it; p. 81.

2d. That he came in possession of said mortgaged premises on Nov. 1st, 1852, under the deeds from the Cottons and Wollcot, *et al.*, and SAID *tax* deed, and remained in exclusive possession.

That there was then a fence or a part of a fence on land described in the mortgage; that on a part of said premises was an old house of which the enclosure had been destroyed.

3d. That he does not know the village of Mechanicsville, but has heard of it. Knows the land described in the map from its boundaries; knows that the land described in his deed covers the land in the map. He means the 19 acres in S. E. qr. of sec. 4, described in tax deed, (see p. 93,) covers the m'tg premises. (It will be recollected that the mortgaged premises are in the southwest qr.) p. 83.

4th. That in 1852, there was a portion of a fence and a house near the N. W. corner of block 4, and the remainder of the mortgaged premises were uncultivated and unenclosed; p. 83.

The plaintiff proved by Levi Blossom, that, as attorney for Prentice from 1841 to 1843, and he believes later, he collected rents for Prentice from portions of the premises.

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JOSIAH A. NOONAN,
vs.
JOHN B. LEE.

Points.

The court will see by the testimony in the case that in October, A. D. 1855, the appellant having litigation with one John J. Orton, purchased the mortgaged premises (giving a mortgage for the purchase money,) as an aid in that litigation; that he knew of adverse claims is apparent from the endorsement on the back of the mortgage, providing for the contingency of a failure of title. Noonan, by aid of this deed, or in some other way, has effected an arrangement with Orton, [see testimony of Orton, p. 83,] and now without the slightest change in the possession or title of the property since the purchase by the appellant, he and Orton join in an effort to defeat the mortgage, by setting up an adverse title in Orton.

The tax deed to Orton subsequent to the sale, which they claim affected the title, does not describe the premises, and is for other reasons void upon its face.

I.

Failure of title or a right of action on covenants of warranty in a deed does not constitute a defence to the foreclosure of a mortgage—at least until the failure of title is ascertained by a suit at law.

Patton vs. Taylor, 7th How'd; p. 132.

II.

The agreement on the back of the mortgage does not apply to a partial failure of title, nor to a condition of things then existing; the appellant was content with the purchase, as the possession and title then stood; it was against a future contingency that he wished to provide. As there is no pretence, at least as shown in the testimony that the whole title has failed, and as the title and possession are in the same situation as at the time of the purchase, the use of this agreement as a ground of defence would be a fraud upon the complainant.

III.

The complainant shows a perfect title in himself at the time of the sale, tracing his title from Government:

1st. The patent from the U. S. to Daniel Bigelow of lot 2, sec. 4, T. 7, R. 22. (p. 94)

2nd. A deed from Daniel to Amason Bigelow of an undivided interest. (p. 37.)

3d. A warranty deed from Daniel and Amason Bigelow to H. V. Prentice of the mortgaged premises. (p. 39.)

4th. A deed from Prentice to Rogers of same premises; p. 41.

5th. A mortgage from Rogers to Prentice. (44.)

6th. A. Master's deed dated Oct. 5th, 1840, on foreclosure of the last mortgage in Chancery [Roger's defendant] to Prentice. (p. 47.)

7th. Prentice to Church and Clark, dated August 5th, 1847. (p. 49.)

8th. Church and Clark to complainant. (p. 52.)

9th. Prentice to complainant dated Oct. 3, 1855. (p. 54.)

IV.

The defendants, in order to defeat this title, have introduced the village plat of Mechanicsville, which shows the relative position of the lots and blocks of the village now actually covering a part of lot 2 in the southwest quarter of section 4, but the certificate of the justice blunderingly substitutes the SOUTHEAST for the SOUTHWEST. It is contended that by reason of this the plat was illegal and the deed and mortgage referring to the plat were void:

1st. Because the law prohibits selling by lot and block without a previous legal plat.

2d. Because the description of the mortgaged premises was indefinite.

There is nothing in the objection that the law prohibits selling by lot and block, because the description here is by metes and bounds, and the sale is of acres undivided; the allusion to the blocks and streets is only for the purpose of finding a starting point and tracing lines; the mortgage does not recognize the plat as having a legal existence, but merely as being a FACT; had the allusion been to a stone or a tree, it would have answered the same purpose.

The second objection seems equally untenable. It is admitted by the answer and proof that the village was in FACT located on lot 2 [in the southwest quarter of the section]; it is also admitted that the PLAT correctly describes the lots, blocks, and streets as located

on lot 2; it is also proven that this village of Mechanicsville was PUBLICLY KNOWN AND NOTORIOUS as located on lot 2. The reference in the deed was to the PLAT as recorded and not to the certificate; by aid of the plat the starting point and lines of the premises conveyed are shown; the deed shows that the premises conveyed are part of lot 2; the plat shows where certain corners of blocks and streets, AS REPRESENTED ON THE PLAT, are. That the *certificate* makes a mistake and alludes to a different quarter, to which the plat is not applicable and which does not even touch the river shown in the plat, can make no difference so long as the *plat* is right and the error of the certificate is corrected by the language of the deed.

Printed Record, p. 14, p. 57, 82, and 83.

The mere allegation of the answer that the use in the certificate of the word southeast, was a MISTAKE for the southwest, would be sufficient to make the deed operative in equity and to show that the defendant [Noonan] ought not to recover at law on the covenants, as the complainant really owned what he intended to sell to the defendant, and in equity neither the title or the consideration failed.

V.

The confirmation of the sale to Prentice on the foreclosure against Rogers was on November 25th, 1840; (see Record p. 36) and claims of Rogers, prior to that time, arising from tax sales or tax deeds were cut off.

The mortgagor in possession cannot, as against his mortgagee, suffer the premises to be sold for taxes, and take advantage of the sale to cut off the title of his mortgagee; it is his duty to protect the title and pay the taxes, as between himself and the mortgagee, so long as he is in possession.

This principle, (which we presume requires no authority,) disposes of the four deeds to Rogers for the taxes of 1839 and 1840.

VI.

Rogers in his testimony states, that he was in possession, and in pernancy of the profits of the premises from 1837 to 1847, at the time of his sale to the Cottons.

The statutes of the Territory of Wisconsin, under which these taxes, (if taxes they were,) were levied, required the PARTY IN

POSSESSION of the land to pay, and the POSSESSOR cannot by a refusal to perform this duty, obtain title as against the owner, whom he unlawfully deprived of possession.

Revised Statutes of 1839 (Territory,) p. 47, sec. 14.

The duty towards government of paying taxes, is theoretically at least a result from the enjoyment of possession, and of the profits of the land; it would be hard if the trespasser could deprive the owner of the income of his land, and thereby render him unable to pay his taxes, and could yet, by the use of the income, purchase the land for taxes, and cut off even the title of the owner. In the Revised Statutes of 1839, (p. 47, sec. 14,) above referred to, it is expressly declared, that if by virtue of any contract or for other cause, the party in possession ought not to pay, he shall have an action of debt, &c., thus excluding all right to take out a tax deed.

VII.

The same reasoning applies to the deed to Orton, for taxes of 1852, (had the land in question been mentioned;) the occupant of the premises is liable for the tax; nor can he, whether as a tenant in common, or as trespasser, avail himself of the sale, to cut off the interest of the owner of the half.

Revised Statutes of 1849, p. 137, sec. 6.

VIII.

Courts of Chancery do not originally try legal titles; nor could the agreement of parties confer that jurisdiction. But the agreement on the back of the mortgage in this case, contemplates a judgment at law, as evidence of failure of title; or at least it does not contemplate a trial of title in the foreclosure case, while the condition of the parties remains unchanged from their status at the date of the mortgage.

IX.

The tax deeds to Rogers are void on their face.

1st. Because the act approved February 18th, 1841, for town and county government, does not authorize the clerk of the Board to give deeds on sales theretofore made.

2d. Because under that Act, the deed should be the deed of the CLERK, and his seal should be affixed; the seal of the Board of Supervisors affixed to these deeds and expressed in the body of the deed to be their seal, does not make the instrument the deed of the clerk.

The language of the law is: then the said clerk of the Board of Supervisors, &c., &c., shall, &c., "execute to said purchaser, his heirs, and assigns, in the name of the Territory of Wisconsin, a conveyance of the lot or tract of land so sold as aforesaid, and described in said certificate," &c., &c.

Township and County Government Act, approved Feb. 18th, 1841. Appendix to Laws of 1541, p. 45, sec. 21.

3d. Because the Territory of Wisconsin should, under the language of same act, appear as grantor and not the clerk. The mere recital "in the name of the Territory," is not sufficient.

4th. Because the sale is of lots and blocks and not by metes and bounds. The levying of a tax is a matter of strict legal right; it cannot be aided by any of that equities existing between vendor nd vendee; it overrides contracts and intentions, and is a question of POWER; when one lot is sold it does not help the purchaser that he intended to buy another; if the description given at the sale is not a proper description, no court of equity can aid it. The owner of the lot is by law entitled to a description that every one can recognize, and to a description that cannot give rise to litigation: 1st, because he is entitled to a fair competition at the sale, which cannot take place when the description is imperfect; 2d, because there must be such a description as will advertise the owner of the necessity for redemption.

In this instance the certificate expressly states that the plat is on the southeast quarter instead of the southwest.

Printed Record, 95.

5th. Such sale by lots, when the plat is illegal, as the answer alleges this to have been, is prohibited by law; this prohibition would not invalidate a sale by contract, as that would merely subject the vendor to punishment without affecting the vendee; but officers of the law must follow the law, and a sale by them for taxes in a manner prohibited by statute would be void.

Revised Statutes of 1839, [Terr.,] p. 161, sect. 9.

X.

No attempt was made to prove the preliminary proceedings, but the naked deed was alone introduced. The Territorial laws made the deed prima facie evidence that the sale was *regular*, but did not make it evidence of the valuation of the property or levy of the

tax, or of the advertisement of forfeiture, or of other proceedings subsequent to the sale.

Rev. Stat. of Territory, p. 49, sec. 22.

XI.

There is no proof as to how much of the mortgaged premises are covered by these various sales of lots; it is evident that the whole are not covered; and nothing less than the failure of the entire title could, under the stipulation, constitute a defence; and even if such proof were admissible, there is no evidence before the court by virtue of which they could assess the damages for any particular part.

XII.

Nearly all the objections applicable to the other deeds are applicable to the deed for the taxes of 1852 given to John J. Orton, who claims the title of Rogers through the Cottons' and others, granters of Rogers. [Printed Record, p. 92.]

As occupant and in receipt of the profits he was bound to pay the taxes. [See testimony of Cotton, p. 90, and of Orton, p. 81.]

But there is one objection peculiar to the deed; the sale was for taxes of 1852, and yet the deed is dated April 25th, 1652, or three years prior to the time of forfeiture. The date of the acknowledgment cannot help the date of the deed, as the certificate of non-payment or redemption refers to the date of the deed, and not of the acknowledgment. [Printed Record, p. 93.]

XIII.

The deed [to Orton, above referred to] does not describe these premises. But Orton, in his testimony, claims that the piece in the southeast $\frac{1}{4}$ of section 4 was intended for part of the mortgaged premises in the southwest $\frac{1}{4}$ of said section.

Our objection to this mode of substituting a piece of land not mentioned in the deed for one that is mentioned, is two-fold: 1st, That chancery never aids a forfeiture, although it sometimes relieves against it; that the description of the land and the steps in selling must be regular and legal from beginning to end, or the title fails; and that the purchaser takes it at his peril.

The next objection is that deeds offered in evidence cannot be contradicted or varied by parol; if there is a mistake which equity will remedy, that must be done before the deed is offered in evidence. But in this case there is not even an allegation in any of pleadings indicating a design to show that the tax deeds were not what they purported to be.

XIV.

The defendant also claims that Orton has title under the act of limitation of 1849, applicable to tax deeds, [see Revised Statutes of 1849, p. 164, sec. 123,] which provides that any suit to recover lands sold for taxes, &c., shall be brought within three years from the time of recording the tax deed of sale.

We contend that this law is not applicable to this case.

1st. Because the plea of the statute is a privilege which the party in possession may waive, and a stranger wishing to defeat the title of the owner, cannot set it up; as Orton has not in any suit availed himself of this statute, Noonan cannot now set it up to defeat his bond and mortgage.

2d. By decisions of the courts of Wisconsin even a party in whose favor the statute runs must, as to lands in chancery, PLEAD the statute. [Parker vs. Kane, 4th Wisconsin Rep., p. 1.]

3d. That the original possession of Rogers was not under the tax title, but under his title acquired from Bigelow and Prentice, [an undivided half from each,] [see testimony of Rogers,] and was subordinate to and consistent with the title of the complainant. The possession of the Cottons followed that of Rogers upon a warranty deed of an undivided interest, and of *all* his *interest* in balance. Orton held under a deed from the Cottons and received possession from them, and the three years from the date of the Record of the tax deed to Rogers had expired BEFORE Orton had possession, so that if Rogers and the Cottons could not plead the statutes, Orton could not.

The three years from the date of the acknowledgment of this deed of Orton had scarcely commenced at the date of the mortgage, and so far as the limitation is concerned the title of Lee was perfect.

The defeat of the title of Noonan after his purchase through the statutes of limitation by mere lapse of time—the title being perfect and not barred at the date of the deed to him—would not give him a right of action on the covenants of the deed, nor would it be a failure of the title obtained from Lee, but a bar of an action through his own laches.

XV.

Rogers having been a tenant in common with Prentice, his [Rogers'] possession was the possession of his co-tenant in common, nor could the co-tenant maintain an action of ejectment against him without proof of an actual ouster. As no such proof has been given in this case there has been no adverse possession, and the statutes of limitation have not even commenced running.

XVI.

After the confirmation by a Court of Chancery of the sale to Prentice on the foreclosure against Rogers, Prentice was entitled to a writ of assistance to obtain possession, and Rogers withheld possession in contempt of the decree of Court; his possession must be considered as by the mere permission of Prentice, who, or his assignee now has the right to the writ; the three years statute does not run against the writ.

XVII.

The statute applies to deeds of lands sold for TAXES. Here has been no proof of a tax, and consequently the statute does not apply.

XVIII.

The limitation is against the recovery of land conveyed for taxes; the land must be CONVEYED for taxes, or there is no three years' limitation.

A party having a tax deed upon lot 1 cannot take possession of lot 2, and claim the latter lot in three years; he has no tax deed on lot 2, so that the limitation does not aid him.

We have already shown that neither of the tax deeds produced describes lands in lot 2 of section 4, consequently they cannot aid the possession of land in lot 2 of section 4.

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XIX.

We have thus far discussed the case as to possession on the testimony of the defendant above, assuming a continuous possession in Rogers and his grantee from 1837. But Levi Blossom, in his testimony, (printed Record, p. 15,) says that as agent for Prentice he had possession of the mortgaged premises from 1841 or 1842 up to 1845, 1846, or 1847; that he collected rents as long as the property was rented; that he cannot say whether or not rents were collected subsequently to 1843, and that Rogers, after some law suits, conceded the title of Prentice. Orton, in his testimony, says (printed Record, p. 82) that he occupied a portion of the premises for saw-logs; that (p. 83) in 1852 there was a portion of a fence and a house near the northwest corner of block 4; there MIGHT have been an acre inclosed, and the BALANCE of the land was open, and that the land not inclosed was not cultivated.

From the testimony of these two witnesses, we find Prentice in possession of a part of the premises a part of the time, and Rogers conceding his title as tenant in common; and we find that of the whole tract only about one acre was inclosed; that Orton used a part in connection with the saw-mill, for depositing saw-logs; but that the greater part was a mere waste, entirely uninclosed and unoccupied by any one. There is not certainly here such an open, notorious, exclusive, and adverse possession as would amount to an ousting of a co-tenant in common. The possession of Orton was the possession of his tenant in common, and on him as receiver of the profits of the mill devolved the duty of paying the taxes.

JAMES S. BROWN,
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